1879

11-205

Post

Jan. 13. 1880

Submitted

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 1059.

OZIAS M. HATCH AND JOHN WILLIAMS, APPELLANTS,

vs.

CHARLES A. DANA.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

FILED NOVEMBER 10, 1879.

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1 Pleas in the circuit court of the United States of America for the southern district of Illinois, held at the city of Springfield, in said district, before the Hon. Samuel H. Treat, judge of the district court of said district, and in the absence of the Hon. Thomas Drummond, judge of the seventh judicial circuit, pro tempore sole judge of said court, on Monday the 6th day of January, at the January term of said court, in the year of our Lord eighteen hundred and seventy-nine, and of our Independence the one hundred and third year.

J. A. JONES, *Clerk.*

CHARLES A. DANA.
vs.
THE CHICAGO REPUBLICAN COMPANY, JACOB BUNN, JESSE K. DUBOIS, JOHN WILLIAMS, O. M. HATCH, CORYDON BECKWITH, and IRA Y. MUNN. } In equity.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Charles A. Dana, a citizen of the State of New York, puts in his place Messrs. Scannon, McCagg, and Fuller, his solicitors, against The Chicago Republican Company, Jacob Bunn, Jesse K Dubois, John Williams, O. M. Hatch, Corrydon Beckwith, and Ira Y. Munn, de-
2 fendants in a bill of complaint, said Jacob Bunn putting in his place Messrs. Stewart, Edwards & Brown, his solicitors, said John Williams and O. M. Hatch putting in their place A. Orendorff, esq., and Milton Hay, esq., their solicitors.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that heretofore, to wit, on the 23rd day of August, in the year of our Lord eighteen hundred and seventy-one, came said complainant, by his solicitors, and filed in the office of the clerk of said court his bond for costs and bill of complaint in said cause, which said bond for costs and bill are in the words and figures following, to wit:

Bond for costs.

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

Circuit court, January term, A. D. 1872. In equity.

CHARLES A. DANA
vs.
THE CHICAGO REPUBLICAN COMPANY ET AL.

We enter ourselves security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action or to any of the officers of this court, and, in default of payment by the complainant of any costs ordered or adjudged to be paid by him, agree and stipulate that execution may issue against our property for any costs taxed against him.

3 Dated this 22d day of August, A. D. 1871.

SCANNON, McCAGG & FULLER.

(Endorsed:) Filed August 23rd, A. D. 1871, J. A. Jones, clerk.

REC. 1059—1

Bill.

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

In the circuit court of the United States, southern district of Illinois.
To the January term, A. D 1872. In equity.

To the honorable the judges of said court:

Charles A. Dana, of the city of New York, and a citizen of the State of New York, brings this his bill of complaint as a creditor of The Chicago Republican Company on behalf of himself and all other creditors of said company who may come in and seek relief by and contribute to the expense of this suit against the said The Chicago Republican Company and Jacob Bunn, Jesse K. Dubois, John Williams, O. M. Hatch, Corydon Beckwith, and Ira Y. Munn, survivors of A. W. Mack, deceased, who are respectively citizens of the State of Illinois.

4 And thereupon your orator complains and says that by act of the general assembly of the State of Illinois, approved February 13th, A. D. 1865, by the then governor of the State of Illinois, which said act is to be found at length in the private laws of the said State for the year 1865, in volume 2, page 117, reference being thereunto had for greater certainty and more specific detail, Ira Y. Munn and others named in said act, and the associates and assignees of the parties so named were created a body corporate and politic under and by the name, style, and title of "The Chicago Republican Company" with perpetual succession, and by that name to be capable in law and equity to sue and be sued, and plead and be impleaded in all courts of law or equity, with a capital stock of five hundred thousand dollars, to be divided into shares of one hundred dollars each, and with the right, when stock to the amount of one hundred thousand dollars should have been subscribed, and fifty per cent. thereof paid in, to commence business under said act.

And your orator further shows unto your honors that at a meeting of the persons named as corporation in said act held at the office of C. Beckwith, in the city of Chicago, on the eleventh day of April, A. D. 1865, the following subscriptions were made to the capital stock of said company, to wit:

A. W. Mack	125 shares
Jacob Bunn	500 "
Jesse K. Dubois	250 "
John Williams	100 "
O. M. Hatch	100 "
Corydon Beckwith	250 "
Ira Y. Munn	50 "

5 And on the same day, and at the same place, a meeting of said subscribers, as stockholders of the said "The Chicago Republican Company" washeld, an organization of said company had and made, a board of directors and secretary were elected, and an assessment of twenty (20) per cent. was made upon the sums subscribed by the several subscribers above named, and said company thereupon commenced business under said charter.

And your orator further shows unto your honors that he does not now know of any other subscriptions to the capital stock of said company than those above mentioned, and does not know the names of any other stockholders of said company, but prays if there are any such he may, upon discovery, make them parties defendant to this bill of complaint.

And your orator further shows unto your honors that he is not fully

advised, and does not certainly know whether or not said twenty (20) per cent. assessed upon said subscriptions was paid by said subscribers, but upon information and belief he charges the fact to be that no more than twenty (20) per cent. was ever paid by any one of said subscribers on his subscription, and that there remains unpaid on each and every of said subscriptions eighty (80) per cent. of the amount thereof.

And your orator further shows unto your honors that he has been informed and believes that on or about the seventh day of October, in the year A. D. 1870, the said "The Chicago Republican Company" sold
6 and transferred to the Republican Company, a corporation purporting to have been recently organized under the general laws of the State of Illinois, all the property assets, rights, credits, subscription lists, and fixtures of the said The Chicago Republican Company (except the franchise of said company), for the sum of ninety-nine thousand seven hundred dollars in cash, and executed to said Republican Company a bill of sale and transfer of all the said property, and received therefor the said sum of ninety nine thousand seven hundred dollars, and paid the same over to said Jacob Bunn, as a creditor of said company, for indebtedness due him for money advanced to said company, and thereupon said The Chicago Republican Company ceased to do business, and has since not done business.

And your orator further shows unto your honors that since that time, as he is advised, the said A. W. Mack has deceased, and that ever since that time said The Chicago Republican Company has been, and now is, insolvent, and has no property or assets with which to pay its debts, and wholly neglects and refuses to pay the same, or any part thereof.

And your orator further shows unto your honors that on the twelfth day of April, A. D. 1871, by the consideration and judgment of the circuit court of the United States, in and for the northern district of Illinois, he, as a creditor of said The Chicago Republican Company, recovered a judgment against said company, in said court, for the sum of six thousand four hundred and nineteen dollars and seventeen cents ($6,419\frac{17}{100}$), besides costs, which said judgment still remains in said court
7 unsatisfied and unreversed; that an execution was duly, and on the fourteenth day of April, A. D. 1871, issued on said judgment, to the marshal of the United States for the northern district of Illinois, which has been returned wholly unsatisfied, and there is no way in which the same can be collected, as your orator is informed and believes, without the aid of the court. And your orator attaches a certified copy of the order of judgment aforesaid to this his bill, as a part hereof, marked Exhibit A.

And your orator further shows unto your honors, that he is advised and believes there are other creditors of said company besides himself whose demands are unpaid.

And your orator had well hoped that no dispute would have arisen, but that said defendant The Chicago Republican Company would have called in the amount unpaid on said several stock subscriptions, and the other defendants herein named would have paid up the amount of the said several subscriptions made by them to the stock of said company, and thus be enabled to pay, and pay, the amounts due your orator as a creditor of said company, and to other creditors of said company.

But now so it is, may it please your honors, the said The Chicago Republican Company, Jacob Bunn, Jesse K. Dubois, John Williams, O. M. Hatch, Corydon Beckwith, and Ira Y. Munn, combining and confederating with divers other persons at present unknown to your orator, but whose names, when discovered, your orator prays he may be at

liberty to insert herein with apt words to charge them as parties defendants hereto, contriving how to wrong and injure your orator in the premises, refuse the said company to call in said unpaid subscriptions, or to make an assessment on the same, or to pay said judgment, and the said the other defendants named herein to pay the amounts unpaid by them on their said subscriptions, or any part thereof, but upon what pretense your orator is not advised.

All which is contrary to equity and good conscience, and tends to the manifest wrong, injury, and oppression of your orator in the premises.

In consideration whereof, and to the end that the said "The Chicago Republican Company," and the said Jacob Bunn, Jesse K. Dubois, John Williams, O. M. Hatch, Corydon Beckwith, and Ira Y. Munn, survivors of said A. W. Mack, deceased, may without oath (their oaths, and the oaths of each of them, being hereby waived in pursuance of the statute in such case made and provided) full, true, direct and perfect answer make to all and singular the matters and things hereinbefore stated and charged, and that they may particularly answer how much has been paid in by them, respectively, on their said subscriptions, and that an account may be taken of what is due from said company to all persons who may elect to come in as creditors thereof under this bill or the decree to be entered in pursuance thereof.

And that an account may be taken of the amounts respectively paid by the said several other defendants upon their subscriptions to the stock of said company, and of the amounts yet unpaid thereon.

And that said co-defendants may be decreed to pay so much of the balance found unpaid on their respective stock subscriptions as will be sufficient to pay the debts of the said company when so ascertained.

And that a receiver may be appointed, and that the said co-defendants of said company, herein named, be directed to pay in to said receiver, in just proportion, so much of the capital stock of said company subscribed by them and remaining unpaid, as will be sufficient to pay the said judgment and costs of your orator, and the debts of such other creditors as may choose to join him and come in under the said decree, and that the receiver be directed to apply the same in discharge thereof, or that your orator may be further and otherwise relieved in the premises, as the nature of the case may require, and according to equity and good conscience may seem meet and proper:

May it please your honors to grant unto your orator the usual process, issuing out of and under the seal of this honorable court, to be directed to the said "The Chicago Republican Company," Jacob Bunn, Jesse K. Dubois, John Williams, O. M. Hatch, Corydon Beckwith, and Ira Y. Munn, therein and thereby commanding them, on a certain day and under a certain penalty to be therein inserted, that they personally be and appear before this honorable court, then and there to answer the premises, and to stand to, abide by, and perform such order and decree therein, as to this court shall seem proper, and as shall be agreeable to equity and good conscience.

And your orator shall ever pray, &c.

CHARLES A. DANA,
By SCAMMON, McCAGG & FULLER,
His Solicitors.

SCAMMON, McCAGG & FULLER,
Solicitors for Complainant.

E. B. McCAGG,
Of Counsel.

UNITED STATES OF AMERICA,
State of Illinois, County of Cook, City of Chicago, ss:

W. Irving Culver, being duly sworn according to law, on oath says that he is one of the solicitors for said complainant, Charles A. Dana; that he verily believes he has acquired and possesses greater and more particular knowledge of the matters stated in said bill of complaint, above written, than the said complainant himself; that said complainant now is, and has been for some years, a resident and citizen of the city and State of New York, and without the State of Illinois,
11 where the various matters and things in said bill stated and set forth have transpired; that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true of his own knowledge except as to the matters which are therein stated to be on information and belief, and as to those matters he believes it to be true.

W. IRVING CULVER.

Subscribed and sworn to before me this 22d day of August, A. D. 1871.

[L. S.] JNO. L. THOMPSON,
Notary Public.

(Endorsed:) Filed August 23d, 1871. J. A. Jones, clerk.

Exhibit A to bill.

Circuit court of the United States for the northern district of Illinois.
Chancery.

CHARLES A. DANA
vs.
THE CHICAGO REPUBLICAN COMPANY.

WEDNESDAY, *April 12th*, 1871.

Before Judge Blodgett.

It appearing to the court that said defendant, The Chicago Republican Company, has not yet paid the note of said complainant referred to in the decree entered herein in said cause on the seventh day of January, A. D. eighteen hundred and seventy-one, and has not
12 brought the same into court with a discharge of said complainant of and from any and all liability thereon, but has wholly failed so to do, although ninety days have elapsed since the entry of said decree herein as aforesaid. Now, on motion of complainant's solicitor and in pursuance of the terms of said decree heretofore entered herein as aforesaid, it is hereby ordered, adjudged, and decreed that the complainant have judgment against the said defendant for the sum of six thousand four hundred and nineteen dollars and seventeen cents, being the amount *the amount* due on said note and costs of this suit to be taxed, and that execution issue therefor.

Circuit court of the United States for the northern district of Illinois.
Chancery.

CHARLES A. DANA
vs.
THE CHICAGO REPUBLICAN COMPANY.

U. S. OF AMERICA,
Northern District of Illinois, ss:

CIRCUIT COURT CLERK'S OFFICE.

I, William H. Bradley, clerk of said court, do hereby certify that I

have compared the foregoing copy of a decree with the original decree entered herein on the 12th day of April, 1871, and that the same
13 is a true, correct, and complete copy of said original decree and of the whole thereof.

In witness whereof I have hereunto set my hand and affixed the seal of *of* said court at Chicago, in said district, this 18th day of August, A. D. 1871.

[L. S.] WM. H. BRADLEY, *Clerk.*

(Endorsed.) Filed August 23, 1871. J. A. Jones, clerk.

And afterwards, to wit, on said 23rd day of August, in the year last aforesaid, a chancery subpœna was issued out of said clerk's office in said cause, directed to the marshal of said district to execute, which said chancery subpœna, together with the return of the marshal thereon, is in the words and figures following, to wit:

Chancery subpœna.

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

The United States of America to The Chicago Republican Company, Jacob Bunn, Jesse K. Dubois, John Williams, O. M. Hatch, Corydon Beckwith and Ira Y. Munn, greeting:

We command you, and every of you, that you appear before our
14 judges of circuit court of the United States of America for the southern district of Illinois, at Springfield, in said district, on the first Monday in the month of January next, to answer the bill of complaint of Charles A. Dana, this day filed in the clerk's office of said court, in said city of Springfield, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the southern district of Illinois to execute.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at Springfield aforesaid, this twenty-third day of August, in the year of our Lord one thousand eight hundred and seventy-one, and of our Independence the ninety-sixth.

[L. S.] J. A. JONES, *Clerk.*

MEMORANDUM.—The above named defendants are notified that unless they shall enter their appearance in the clerk's office of said court, at Springfield aforesaid, on or before the day to which the above writ is returnable, the complainant's bill will be taken against them as confessed, and a decree entered accordingly.

J. A. JONES, *Clerk.*

15 *Return of Marshal.*

Served the within writ on the 25th day of August, A. D. 1871, by delivering a true copy of the same to each of the within named, Jacob Bunn, Jesse K. Dubois, O. M. Hatch, & John Williams.

The within named Corydon Beckwith and Ira Y. Munn not found in my district.

JOHN ROUTT,
U. S. Marshal.

(Endorsed:) Filed August 31st, A. D. 1871. J. A. Jones, clerk.

And afterwards, to wit, on Monday, the 1st day of April, at the January term of said court, in the year of our Lord eighteen hundred and seventy-two, the following proceedings were had in said court and entered of record in said cause, to wit:

Leave to file ans., &c.

CHARLES A. DANA
v.
THE CHICAGO REPUBLICAN COMPANY ET AL. } In chancery.

This day come the defendants, Jacob Bunn, Jesse K. Dubois, O. M. Hatch, and John Williams, by Messrs. Hay, Greene, and Littler, their solicitors, and on their motion leave is granted them to file their answer herein by the first Monday of May next.

16 And afterwards, to wit, on Monday, the 6th day of May, in the year last aforesaid, the following further proceedings were had at chambers and entered of record in said cause, to wit:

Leave to file ans. extended.

CHARLES A. DANA
vs.
THE CHICAGO REPUBLICAN COMPANY ET AL. } In chancery.

This day come the defendants, by Messrs. Hay, Greene & Littler, their solicitors, and on their motion leave to file an answer herein is extended for ten days.

And afterwards, to wit, on the 8th day of January, in the year of our Lord eighteen hundred and seventy-three, came said defendant, Jacob Bunn, by his solicitors, and filed his demurrer in said cause, which said demurrer is in the words and figures following, to wit:

Demurrer.

In the circuit court of the United States, southern district of Illinois.
In equity. Jan. term, 1873.

CHARLES A. DANA
vs.
THE CHICAGO REPUBLICAN COMPANY, JACOB Bunn, et als.

The demurrer of J. Bunn, one of the defendants, to said bill of complaint.

17 This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's bill contained to be true in such manner and form as the same are therein & thereby set forth and alleged, do' demur to said bill, and for cause of demurrer shows, that it appears by the said complainant's said bill that the personal representative of A. W. Mack in said bill named as a subscriber to the capital stock of the said Chicago Republican Company, and within the jurisdiction of this court, is a necessary

party to said bill, and yet said personal representative is not made a party to said bill.

Wherefore, &c., he prays the judgment of this honorable court whether he shall be compelled to make further or other answer to said bill, and prays to be dismissed with his costs, &c.

STUART, EDWARDS & BROWN,
For Bunn.

(Endorsed:) Filed January 8th, 1873. J. A. Jones, clerk.

And afterwards, to wit, on Friday the 27th day of June, at the June term of said court, in the year last aforesaid, the following further proceedings were had in said court in said cause and entered of record, to wit:

18 *Order overruling demurrer.*

CHARLES A. DANA
vs.
THE CHICAGO REPUBLIC COMPANY ET AL. } In chancery.

This day this cause came on to be heard upon the demurrer to the bill herein, and the court having heard argument of counsel, and being sufficiently advised in the premises, overrules said demurrer. And now the defendants are ruled to answer by the first Monday of November next, with leave to file cross-bill by that time.

And afterwards, to wit, on the 3rd day of November, in the year last aforesaid, came said defendants by their solicitors, and filed their separate answers in said cause, and said defendant Bunn filed his cross-bill in said cause, which said answers and cross-bill are in the words and figures following, to wit:

Answer of John Williams.

UNITED STATES OF AMERICA:

In the circuit of the United States for the southern district of Illinois.

The separate answer of John Williams to the bill of complaint filed in said court by Charles A. Dana against the Chicago Republican Company, and others.

19 This respondent, saving and reserving to himself all benefit and advantage that may or can be taken to the many and manifest errors, misstatements, and insufficiencies of said bill of complaint, for answer to so much thereof as he is advised it is material for him to answer, answering, says: That he, this respondent, adopts all the statements and averments contained in the answer of his co-defendant, Ozias M. Hatch, and prays that the said answer of the said Hatch be taken in all things as the answer of this respondent, and further this respondent says that all the allegations in said answer are true; and that respondent does not know of any other matter or thing in said bill of complaint alleged beyond such as are fully answered in the said answer hereby adopted by this respondent.

And respondent prays to be hence discharged with costs.

JOHN WILLIAMS,
By HERNDON & ORENDORFF,
His Solicitors.

(Endorsed:) Filed Nov. 3, 1873, J. A. Jones, clerk.

19¼ *Answer of Dubois.*

UNITED STATES OF AMERICA:

In the circuit court of the United States for the southern district of Illinois.

The separate answer of Jesse K. Dubois to the bill of complaint filed in said court by Charles A. Dana against said Jesse K. Dubois, Jacob Bunn, The Chicago Republican Company, John Williams, and others.

This repondent, saving and reserving to himself all benefit and advantage that may or can be taken to the many and manifest errors, misstatements, and insufficiencies of said bill of complaint, for answer to so much thereof as he advised it is material for him to answer, answering, says:

That he, this respondent, adopts all the statements and averments contained in the answer of his co-defendant, Ozias M. Hatch, to said bill of complaint, and prays that the said answer of said Ozias M. Hatch be taken in all things as the answer of this respondent, and, further, this respondent says that all the allegations in said answer are true; and that respondent does not know of any other matter or thing in said bill of complaint alleged beyond such as are fully answered in the said
19½ answer hereby adopted by this respondent.

And respondent prays to be hence discharged with his costs.

JESSE K. DUBOIS,
By HAY, GREENE, & LITTLER.

HAY, GREENE, & LITTLER,
Solicitors.

OCT. 5, 1873.

By consent to be filed as of the first day of October, 1873.

ROBINSON, KNAPP, & SHUTT,
Sol. for Compl't.

(Endorsed:) Filed November 3rd, 1873. J. A. Jones, clerk.

Answer of Hatch.

In the circuit court of the United States for the southern district of Illinois.

The separate answer of Ozias M. Hatch to the bill of complaint
20 filed in said court by Charles A. Dana against said Hatch, The Chicago Republican Company, Jacob Bunn, John Williams, and others.

This respondent, saving and reserving to himself all benefit and advantage that may and can be taken to the many and manifest errors, misstatements, and insufficiencies of said bill of complaint, for answer to so much thereof as he is advised it is material for him to answer, answering, says:

It is true that an act of the general assembly of the State of Illinois was passed at the time and in the manner set forth in said bill of complaint, and that an organization was effected under said act, and a company organized under the name of the Chicago Republican Company.

It is also true that the shares of said company were subscribed for and

taken to the amount of $500,000, but this respondent does not admit that the said shares were distributed in the manner alleged in said bill.

It is also true that when said company was organized a board of directors and secretary were elected, and that twenty per cent. of the amount of all the stock subscribed was paid in.

But this respondent denies that said sum of 20 per cent. was all
21 that was ever paid on said stock, and avers that he, this respondent, while said company was in full operation, paid in the further sum of ten per cent. on all the stock held by him, and that most, if not all, the other share holders paid in the like percentage on their shares.

Further answering, respondent says it is true that said company, about the seventh day of October, 1870, sold all its materials and property to a certain other association organized under the general incorporation laws of the State, as respondent believes, and known as the Republican Company, but respondent denies that the proceeds of said sale were paid to Jacob Bunn on indebtedness claimed by him against the said Chicago Republican Company. Respondent further admits that since said sale said company has not transacted any business, but does not know whether said company owes any indebtedness either to the complainant or any other person or persons. Respondent admits that since said sale no assessment has been made by said company, or its officers, on the stockholders, or any of them, for the purpose of paying any debts thereof, and respondent does not know whether said company is or is not insolvent. But this respondent denies that he confederated with his co-defendants or any other person or persons whatever to injure or defraud complainant or to avoid the payment of any debt or debts of said company in any way.

Further answering, respondent denies that complainant recovered a judgment against said company in the circuit court of the United
22 States for the southern district of Illinois, as charged in said bill, and calls for full proof with respect to such allegation. Respondent knows nothing of the execution alleged in said bill to have been issued on such judgment and returned, but admits that no such judgment has been paid, and that if such judgment was ever lawfully rendered it still remains in full force and unsatisfied.

And the respondent, in reply to such portions of said bill as call for a discovery of the names of the stockholders of said Chicago Republican Company, in order that they may be made parties defendant in this cause, says that about the 1st day of August, A. D. 1866, the said company determined to reduce its capital stock from $500,000 to $200,000, and all the stockholders consenting thereto, the said company did, on said day, at a meeting of all the stockholders, regularly and lawfully reduce its capital stock to said last named sum, and did thereupon call in all existing certificates of stock and reissue to the holders thereof new certificates for two-fifths of the amount which they originally held.

That since said reduction of stock, various transfers of portions of the new or substituted stock have been made, but this respondent does not know the extent of such transfers, nor to whom or by whom they have been made. Respondent herein further answering says that Jesse K. Dubois, Jacob Bunn, John Williams, the personal representatives of A. W. Mack, Shelby M. Cullom, Edward F. Leonard, R. R. McCabe, M. L. Groesbeck, C. C. Wilcox, Corydon Beckwith, Amos Babcock, Alfred L. Smith, C. M. Pugh, James Barclay and Samuel A. Nickerson
23 are now holders and owners of portions of stock, and were such holders when said bill was filed.

Respondent asks that, in conformity with the prayer of said bill, all said persons be made defendants herein, and that an account be taken

of the shares held by each of the defendants and the amount of money already paid thereon, if it shall appear that said company is indebted to complainant as alleged in the bill, and that said stockholders are liable for such indebtedness or any part thereof.

And now having fully answered, this respondent prays to be hence discharged with his costs in their behalf expended.

OZIAS M. HATCH,
By HAY, GREENE & LITTLER.

HAY, GREENE & LITTLER,
Solicitors.

(Endorsed:) Filed November 3, 1873. J. A. Jones, clerk.

Answer of Bunn.

The separate answer of Jacob Bunn to a bill in chancery exhibited in the circuit court of the United States for the southern district of Illinois, in which Charles A. Dana is complainant, and The Chicago Republican Company, your respondent, Jesse R. Dubois, John Williams, O. M. Hatch, Corydon Beckwith and Ira Y. Munn are defendants.

This respondent, saving, excepting &c., for answer to so much of said bill of complaint as he is advised it is necessary for him to answer, says:

24 That he believes it to be true and therefore admits that the general assembly of the State of Illinois passed the said act as alleged in said bill, and which, by the approval of the governor of said State, became a law in manner and form as charged in said bill, and he believes the features of said act are correctly stated in said bill, but for greater certainty he refers to said act.

This respondent, further answering, says that he is informed and believes that the corporators in said act named did meet at the time and place stated in said bill, and did organize under said act The Chicago Republican Company in the manner and form and with the board as stated in said bill; but as your respondent was not present and can only answer this allegation from information and belief, he refers to the proceedings of said board, which he prays may be produced upon the trial hereof and made a part of this answer.

This respondent does not know of his own knowledge who subscribed and in what amounts to the capital stock of said company, but he refers to the subscription, which he prays may be produced upon the trial hereof, and which he makes a part of this his answer.

The respondent was not himself present, and did not in person sign said subscription, but his name was signed thereto by some person, which act he has since fully ratified, but does not remember that he ever saw said subscription.

This respondent does not of his own knowledge know that there were any other subscribers to the capital stock of said company, but he refers to the answer of his codefendant Hatch for the name of other

25 corporators; and your respondent prays that said complainant may be required to make the individuals named in the answer of said Hatch parties to his said bill. This respondent has been informed and believes and so charges, that the said complainant, Charles A. Dana, was a stockholder of said The Chicago Republican Company, and he prays that he may be required to pay his just proportion of said debts of said company.

This respondent, further answering, says that he believes it to be true,

as stated in said bill, that the said A. W. Mack is dead, and that his estate is insolvent.

This respondent is not advised and does not know whether the said complainant recovered the judgment against The Chicago Republican Company for the amount and issued execution thereon, all in manner and form as stated in said bill, and therefore he neither admits or denies the allegations relating thereto, but calls upon the complainant for strict proof; but if there is any such judgment for a just debt remaining unpaid, this respondent is willing to pay his just proportion in such manner as this honorable court may direct. This respondent does not know how the stock in said company was distributed upon its said first organization, and therefore does not admit or deny the same was distrib-
26 uted in manner charged in said bill or to the persons in said bill named.

This respondent, further answering, says that said company, after its said organization, carried on business under said first organization until about the first day of August, 1866; that on or about said time the said company reduced its stock by the consent of the stockholders from $500,000 to $200,000, recalled the certificates issued before that time by universal consent, and cancelled the same; that thereafter and thereupon they issued new stock on the basis of $200,000, and to other parties than the original subscribers and stockholders, but to some original and to other new stockholders, but this respondent does not know who were the holders and owners of said certificates of stock, or in what proportion said new stock was apportioned, but he believes the names of said stockholders are correctly given in the answer of his co-defendant Hatch, which part of the answer of Hatch he adopts, and charges that the name of said Charles A. Dana should be added thereto as stockholder.

Your orator, further answering, says that on or about that time the debts and liabilities of the said The Chicago Republican Company amounted to about the sum of $54,430.75, which amount this re-
27 spondent paid for the Chicago Republican Company, and he files herewith a detailed statement of the debts so paid, which he prays may be taken as a part of this his answer, marked A.

This respondent, further answering, says that after the reduction of said stock as aforesaid said company continued to carry on business until about the 7th day of October, 1870, when all the property and assets of said The Chicago Republican Company except the franchise were sold and transferred to the Republican Company; that since said 7th October, 1870, the said The Chicago Republican Company has ceased to do business, and has made no assessment on its stock.

This respondent, answering, says that on the 7th day of October, 1870, The Republican Company was indebted to this respondent and to other parties in the further sum of $111,408.18, and this respondent files herewith a detailed statement of such further indebtedness; all of which has been paid and discharged by this respondent, and marked B, and prayed to be taken in as a part of this his answer.

This respondent, answering, states and charges that the Chicago Republican Company is indebted to this respondent on account of said indebtedness in the sum of $76,130,$\frac{73}{100}$ over and above all property,
28 money, or assets received by him from or on account of said company.

This respondent prays that all the stockholders named in said answer of said Hatch may be made defendants, and for that purpose said complainant may be required to amend his said bill and make

them parties and have process issued for them, and that an account may be taken between all said parties, and, if the said company is justly indebted to said complainant, that an assessment may be made in just proportion upon said stockholders to pay the same, and also to pay this respondent such balance due him as aforesaid, and that in making said assessment that your respondent may be credited for the amount paid him for said company as aforesaid, and with said balance. Having fully answered, he now prays to be dismissed with his costs.

JACOB BUNN.

STUART, EDWARDS & BROWN
For Bunn.

A.

The Chicago Republican Company to J. Bunn, Dr.

1866.			
July	7.	To cash paid Traders' Bank	$10,000
	19.	" " " E. F. Leonard	2,500
Aug.	9.	" " " First National Bank, Chicago	17,140.56
	10.	" " " E. F. Leonard	3,480.53
	27.	" " " note & int. to C. A. Dana	2,537.50
29	31.	" " " " " Sheban	4,257.09
	Sept. 14.	" " interest First National Bank, Chicago	44.72
Nov.	26.	" " " note & int. to C. A. Dana	2,576.25
Dec.	31.	" " interest to date	1,678.27
1867.			
Feb'y	27.	" " paid note & int. to C. A. Dana	2,613.75
M'ch	1.	" " " " to Connor	2,200
	16.	" " " " " Tewksberry	2,750
May	28.	" " " " & int. to C. A. Dana	2,652.08
			$54,430.75

B.

The Chicago Republican Company to J. Bunn, Dr.

1870.			
Oct. 1.	To note due Oct. 6, 1869	5,000	
	Interest to Octo. 1, 1870	533.33	
			5,533.33
	" " note due Aug. 27, 1869	10,000	
	Interest to Octo. 1, 1870	1,091.67	
			11,091.67
	" " note due Oct. 23, 1869	15,000	
	Interest to Oct. 1, 1870	1,404.17	
			16,404.17
	" " note due Dec. 22, 1869	10,000	
	Interest to Octo. 1, 1870	772.22	
			10,772.22
	" " note due Nov. 17, 1869	15,000	
	Interest to Oct. 1, 1870	1,304.16	
			16,304.16
	" " cash paid Higgins Aug. 17, 1869	2,500	
	Interest to Octo. 1, 1870	279.86	
			2,779.86
	" " cash paid Powell Sept. 23, 1869	2,500	
	Interest to Octo. 1, 1870	254.86	
			2,754.86
	" " " paid Elliott Oct. 13, 1869	3,000	
	Interest to Octo. 1, 1870	289.17	
			3,289.17
	" cash paid note Ballantino Jan. 15, 1870	1,000	
	Interest to Octo. 1, "	70.83	
			1,070.83

30	1. To cash paid Mer. Sar. L. & Trust Co. M'ch 11, 1870	10,000.00	
	Interest to Octo. 1, "	552.77	
			10,552.77
	" " cash paid Nicolay Sep. 6, 1870	3,000.00	
	Interest to Octo. 1, "	20.00	
	" " " " Nicolay Sep. 20, "	2,000.00	
	Interest to Oct. 1, "	5.56	
			5,025.56
	" " amount assumed to Elliott & since paid	2,179.58	
	" " " " Laflin, Butler & Co. " "	3,650.00	
	" " " " Traders' National Bank "	20,000.00	
			25,829.58
			$111,408.18

(Endorsed:) Filed Nov. 3rd, 1873. J. A. Jones, clerk.

Cross bill of Bunn.

To the honorable the judges of the circuit court of the United States in and for the southern district of the State of Illinois:

Jacob Bunn, of the State of Illinois, and of the district aforesaid, by leave of the court first had, brings this his cross bill against Charles A. Dana, a citizen of the State of New York, the Chicago Republican Company, Jesse K. Dubois, John Williams, O. M. Hatch, Corydon Beckwith, Ira I. Munn, Shelby M. Cullom, Edward F. Leonard, R. R. McCabe, M. F. Grovebeck, C. C. Wilcox, Amos Babcock, Alfred P. Smith, C. M. Pugh, James Barclay, and Samuel Nickerson.

And thereupon your orator complains and says that by an act
31 of the general assembly of the State of Illinois passed at the session of 1865, and approved February 13th, 1865, and entitled "An act to incorporate the Chicago Republican Company," Ira Y. Munn and others named in said act and their associates were made a body corporate and politic by the name and style aforesaid, with the usual corporate powers, with a capital stock of five hundred thousand dollars, to be divided into shares of one hundred dollars each, and with the right when stock to the amount of one hundred thousand dollars should be subscribed and fifty per cent. thereon paid in to commence business under said act.

Your orator further charges that some time about the 11th day of April, 1865, a meeting of said corporators was had in the city of Chicago, Illinois, at which subscriptions were made to the capital stock of said company under the act aforesaid, and that A. W. Mack, your orator, Jesse K. Dubois, John Williams, O. M. Hatch, Carydon Beckwith, and Ira Y. Munn subscribed the full amount of five hundred thousand dollars, but your orator does not know in what proportion or how said stock was distributed; that at the same time and place said stockholders met and organized said company and elected officers, ordered an assessment of twenty per cent. upon the stock so subscribed, and
32 thereupon commenced business under said act of incorporation.

Your orator charges that the said Mack has since died, and as your orator is informed and believes, his estate is insolvent.

Your orator further charges that said company under said organization continued to carry on business at the city of Chicago, Illinois, until on or about the first day of August, 1866.

Your orator further charges that on or about said first day of August, 1866, a meeting of the stockholders of said company was held, and that your orator is informed, and believes, and charges that at said meeting by agreement of the stockholders aforesaid the capital stock of said

company was reduced from said five hundred thousand dollars to the sum of two hundred thousand dollars, and in some way said company was re-organized. And your orator charges that at said time said company was indebted, and your orator afterwards paid for said company debts then existing against said company to the amount of fifty-four thousand four hundred and thirty $\frac{75}{100}$ dollars, and your orator refers for a detailed statement of the debts so paid to the statement filed with his answer to the original bill filed herein by the said Dana.

Your orator charges that he paid said indebtedness by the re-
33 quest of the said The Chicago Republican Company, and the stockholders thereof, and the defendants herein.

Your orator further charges that the said The Chicago Republican Company thereafter continued to carry on business under its organization aforesaid until on or about the 7th day of October, 1870, when the Chicago Republican Company sold all its property and assets, except its franchise, to the Republican Company, a corporation organized under the general laws of the State of Illinois, and that since said sale The Chicago Republican Company has ceased to do business.

Your orator charges that on said 7th day of October, 1870, or at the time of said sale, The Chicago Republican Company was indebted to your orator & other persons in the sum of one hundred and eleven thousand four hundred & eight $\frac{75}{100}$ dollars, and your orator afterwards paid all said debts other than his own by request of said company.

And your orator refers for a detailed statement of said indebtedness to Exhibit B, filed with his answer to said original bill of the said Dana.

He charges further that the said The Chicago Republican Company is still justly indebted to your orator in the just sum of twenty-six thousand one hundred thirty $\frac{25}{100}$ dollars, over and above all sums recovered by your orator from or on account of said company, as may be seen by reference to said statement B aforesaid filed with his said answer to original bill aforesaid.

Your orator charges further that since the original organization
34 of said company as aforesaid, there have been many changes made of stockholders by assignment or otherwise; that your orator is not informed and cannot give the history of said changes; that the said Charles A. Dana, Jesse K. Dubois, John Williams, O. M. Hatch, Corydon Beckwith, Ira J. Munn, Shelby M. Cullom, Edward F. Leonard, R. R. McCabe, M. F. Grovesbeck, C C. Wilcox, Amos Babcock, Alfred T. Smith, C. M. Pugh, James Barclay, and Samuel Nickerson are the stockholders of said company, and were so at the time aforesaid.

Your orator further states that at the time of the sale of said The Chicago Republican Company to said Republican Co. or very soon thereafter, he received from said The Chicago Republican Company the sum of ninety-nine thousand seven hundred dollars, for which amount said The Chicago Republican Co. are justly entitled to a credit, which being credited, would leave the balance of $76,130 $\frac{25}{100}$, as above stated, due & owing to your orator.

In tender consideration of all which your orator prays that the said Charles A. Dana, The Chicago Republican Company, Jesse K. Dubois, John Williams, O. M. Hatch, Corydon Beckwith, Ira J. Munn, Shelby M. Cullom, Edward F. Leonard, R. R. McCabe, M. F. Grovesbeck, C. C. Wilcox, Amos Babcock, Alfred T. Smith, C. M. Pugh, James Barclay, and Samuel Nickerson may be made defendants to this his cross-bill, and that they may be required to answer all and singular the
35 allegations of this his cross-bill.

That your honor will have an account taken of said indebted-

ness, and that said defendants may contribute in just proportions to the payment of said indebtedness and all other the indebtedness of said company, and that your honor will grant such other and further relief as the equity of his case may require; and, as in duty bound, &c.

STUART, EDWARDS & BROWN,
For Complainant.

(Endorsed:) Filed Nov. 3rd, 1873. J. A. Jones, clerk.

And afterwards, to wit, on Monday, the 12th day of January, at the January term of said court, in the year of our Lord eighteen hundred and seventy-four, the following further proceedings were had in said court, and entered of record in said cause, to wit:

Leave to file answer.

CHARLES A. DANA
vs.
THE CHICAGO REPUBLICAN COMPANY ET AL. } In chancery.

On motion of defendants, leave is granted to file answers herein.

And afterwards, to wit, on the 14th day of March, in the year
36 last aforesaid, came said complainant, by his attorneys, and filed in said clerk's office his replication in said cause; which said replication is in the words and figures following, to wit:

Replication.

In the circuit court of the United States, southern district of Illinois.
In chancery.

CHARLES A. DANA
vs.
THE CHICAGO REPUBLICAN COMP'Y, JACOB BUNN, et al.

The said complainant, by his solicitors, Robinson, Knapp, & Shutt, & for replication to the several answers herein filed by Jacob Bunn, John Williams, Jesse K. Dubois, & Ozias M. Hatch, defendants to said suit, says that the said answers & each of them are wholly untrue, uncertain, & insufficient, and that the bill of complaint & the matters & things therein contained & set forth are true, certain, & sufficient, as he, said complainant, will maintain & prove when, &c.

ROBINSON, KNAPP & SHUTT,
Sol's for Compl't.

(Endorsed:) Filed March 14th, 1874. J. A. Jones, clerk.

And afterwards, to wit, on Tuesday, the 26th day of January, at the January term of said court, in the year of our Lord eighteen
37 hundred and seventy-five, the following further proceedings were had in said court and entered of record in said cause, to wit:

Bill dismissed as to Bunn, &c.

CHARLES A. DANA
vs.
THE CHICAGO REPUBLICAN COMPANY ET AL. } In chancery.

This day comes the complainant, by Messrs. Robinson, Knapp, and

Shutt, his solicitors, and dismisses his bill as to Jacob Bunn, whereupon Jacob Bunn dismisses his cross-bill.

And afterwards, to wit, on Tuesday, the 26th day of June, at the June term of said court, in the year of our Lord eighteen hundred and seventy-seven.

Order app'ting special commissioner.

CHARLES A. DANA
vs.
THE CHICAGO REPUBLICAN COMPANY ET AL. } In chancery.

On motion of complainant's solicitors in this case, Valney Hickox, esq., is appointed a special commissioner herein to take the testimony desired by either party in this case, and such testimony so taken may be read by either party upon the hearing hereof.

38 TESTIMONY ON BEHALF OF COMPLAINANT.

United States circuit court, southern district of Illinois.

CHAS. A. DANA
vs.
THE CHICAGO REPUBLICAN COMPANY.

I, Volney Hickox, a special commissioner appointed by the court to take testimony in the above entitled cause, do hereby certify that on Tuesday, the 26th of June, at the bank office of Jacob Bunn, in Springfield, Illinois, before me appeared Jacob Bunn and W. J. Culver, who having been by me first duly sworn did then and there testify both in answer to questions put by A. L. Knapp, attorney for the plaintiff, and to cross-questions put by M. Hay, attorney for the defence; and I further certify that on Tuesday, the 3rd day of July, at the office of M. Hay, attorney for the defence in this cuase, before me also appeared O. M. Hatch and John Williams, who also having been by me first duly sworn did also testify both in answer to questions by Mr. Knapp for the plaintiff and to cross-questions by Mr. Hay for the defence; and I hereby further certify that on both occasions such testimony, to wit, on Tuesday the 26th of June, the testimony of Jacob Bunn and W. J. Culver, and on the following Tuesday, the 3rd of July, the testimony of O. M. Hatch and
39 John Williams, was by me, each part respectively as spoken, taken down in short hand, without objection from either party and subsequently under my direction transcribed; and finally as such special commissioner I hereby certify that to the best of my knowledge and belief the following annexed pages contain a true, verbatim record of such testimony by me so taken as aforesaid.

In attestation whereof I hereto affix my hand this 3d day of July, A. D. 1877.

VOLNEY HICKOX,
Special Commissioner.

Deposition of Jacob Bunn.

JACOB BUNN sworn.

Direct, by Mr. KNAPP:

Q. State your name, place of residence, and occupation.
A. Jacob Bunn; residence, Springfield; occupation, banker.

Q. Will you state about what time The Chicago Republican Company, a newspaper, was organized in the city of Chicago?

A. I think in '65; about April.

Q. Can you state how much stock was ever taken in that corporation at the time of its organization?

A. I can't.

Q. Do you know— can you state the amount of stock that John Williams or O. M. Hatch had in it?

A. No, sir.

Q. Were you one of the subscribers to the the stock of said company?

A. Yes, sir.

Q. State the amount subscribed by or for you.

A. What does it state there in my former written answer?

40 Q. Five hundred shares.

A. Well, it is in the record there.

Q. You don't know what Hatch or Dubois had?

A. No, sir.

Q. Do you know how much was ever called in of such subscriptions?

A. I don't.

Q. What became of the Chicago Republican Company, by sale or otherwise?

A. Well, it was sold to the Republican Company of Chicago.

Q. Sold to the Republican Company of Chicago; was that a new corporation organized under some law of Illinois?

A. Under the general law.

Mr. HAY. What was the first corporation?

A. The first was the Chicago Republican, then as changed it was the Republican Company of Chicago; that was to designate the change.

Q. After the sale by the Chicago Republican Company to the Republican Company did the first-named corporation cease to exist and do business?

A. Yes, sir.

Q. Is the Chicago Republican Company insolvent, as you understand, as a corporation?

A. Yes, sir; I guess they don't owe anything—the Republican Company of Chicago. Do you mean the Chicago Republican?

Q. Yes, sir. I ask whether that's insolvent so far as you know?

A. Pretty hard to say; I guess nobody holds any claims against it that I have heard, unless it is this judgment of Dana's, and my-

41 self; if they owe anybody it is me; I paid the debts of the concern; I know that I have a claim against it; that answer of mine will show everything I know about it at the time it was made.

Q. Did you have a lot of papers, including the subscription list and the minutes of the corporation, in your possession; and, if so, what has become of the same?

A. All the papers I had I placed in the hands of your firm. (Addressing Mr. Culver, a member of a Chicago law firm, present.)

Q. Are you able to state what those papers and books were? Do you remember whether the subscription paper was among them?

A. These books were all tied up together---put in a package and tied up; I never examined them, but delivered them in the same condition to this concern; for safe-keeping I think they were taken out of the office and put in the Traders' Bank, Chicago.

Q. Since that time have you seen them?

A. No, sir; I think I gave an order to Scammon, McCague & Fuller,

on the Traders' Bank, to get them. They were taken out of the printing office to be better taken care of in the Traders' Bank, and I gave this lawyer firm in Chicago an order for them.

Q. For what purpose did you direct them to be placed in the hands of Scammon, McCague & Fuller?

42 For the purpose of bringing suit against the Chicago Republican Company for my benefit, to recover advances I had made and what they owed me.

Q. Do you know A. W. Mack?

A. Yes, sir.

Q. Do you understand he is dead?

A. Yes, sir.

Q. How do you understand his estate to be; you say here (alluding to witness's former written answer, now in the hands of the examiner) you understand and believe he is insolvent?

A. Well, that's about the time I had made some inquiry; I have paid no attention to it since.

Mr. CULVER. No dou't about that.

A. That was my understanding at the time that he was insolvent.

Q. Do you know of any reduction of the capital stock of this concern from five hundred to two hundred thousand?

A. What do I state there? (again referring to written answer.)

Q. First of August, '66, said company reduced its stock from five hundred to two hundred thousand dollars, etc.

A. That's it. The statements contained in my answer at the time I believe to be true in relation to said reduction; I have paid no attention to it since that time.

Q. At the time of the dissolution of this corporation, was it or not largely in debt to you?

A. Yes, sir.

Q. To an amount greater than any stock subscription you have or had in it?

43 A. Yes, sir.

Q. What do you know of this subscriptions—of the following persons being subscribers to the amounts mentioned in connection with their names respectively: A. W. Mack, 1,250 shares; Jacob Bunn, five hundred shares; Jesse K. Dubois, two hundred and fifty shares; John Williams, one hundred shares; O. M. Hatch, 100 shares; Corydon Beckwith, 250 shares; Ira Y. Munn, 50 shares; shares being 100 shares each?

A. I presume that's correct; the names are familiar to me, but I have no personal recollection of the amounts.

Q. Do you know of any other subscriptions besides those?

A. No, sir.

Cross-examination by Mr. HAY:

Q. I will get you to state what you may know of Charles A. Dana being one of the stockholders of the Chicago Republican Company?

A. I don't know that he was, only from what I heard here in general conversation; it was my understanding when he borrowed this money of John Williams and myself that it was to pay his stock.

Q. Did you understand that from him—at any time from him—that he was a stockholder of the company?

A. Well, he was down here in this room Dana, Colonel Williams, Jesse Dubois, and Mack.

44 Q. What was the understanding as to what his relationship as a stockholder was?

A. He was a stockholder; that was my understanding at the time.

Q. To what amount was he a stockholder?

A. My understanding at the time was that he wanted this ten thousand to pay his stock.

Q. That he represented ten thousand dollars' worth of stock—that the ten thousand dollars he wanted was to pay for that?

A. Yes, sir; there were calls upon the stockholders then to pay up.

Q. I will get you to state what your understanding was as to the sale of the assets of the Republican Company; what was this new corporation's name?

Mr. KNAPP. One was the Chicago Republican Company, which sold to the Republican Company?

Q. Yes, sir; the Chicago Republican Company to the Republican Company; I will get you to state—didn't the assets of that company come to your hands—of the old company?

A. Yes, sir; what was left of it.

Q. Was or was there not an understanding that in consideration of your payments you should hold the assets of the company?

A. I kept an account of what I paid the old Chicago Republican Company; the Chicago Republican Company sold out what they had to the Republican Company of Chicago, and guaranteed the new company against any debts of the old company.

45 Q. The old company guaranteed the new company against the debts of the old company?

A. That was it; that was the only way we could sell; that is one reason why the name was changed to relieve it of any liabilities of the old company; after they reduced the stock I never made any claim for any money I paid out after that; this claim of mine against the old company was for debts they had contracted.

Q. Have you any means of fixing the time when the stock was reduced?

A. No, I have not.

Mr. KNAPP. You state in your answer.

A. This was about the first of August, '66. I know nothing but what is in this answer; at the time this was given I took some pains to get all the facts; went to Chicago to see what I could find out there.

Redirect by Mr. KNAPP:

Q. Did Mr. Dana any time in '66 borrow any money of yourself and John Williams, and, if so, how much and for what purpose did you understand the money was borrowed?

A. He borrowed five thousand dollars from me on the 18th of January, '66, and I think the same amount of Colonel Williams.

Q. And for what purpose?

A. To pay his subscription to the stock of the Chicago Repub-

46 lican—that was my understanding. I guess there is a record of that—my understanding.

Q. In any sale made of the Chicago Republican Company's property, did you pay—in any manner bind yourself to pay any and all debts of that corporation?

A. Since I came to think of it, Hatch says I promised to pay the debts. I think it is very likely I agreed with them I would advance the money to pay the debts of the company. Mr. Hatch don't remember; it was not that I would individually pay the money; such a thing as that never entered my mind, because all money I advanced the company was charged to the company. I advanced the money to the company to pay the debts.

Mr. Hatch wouldn't state anything but what he believed to be true, but I emphatically deny that I agreed to advance the money individually.

Q. Except as a loan?

A. Except as a loan; there is where Mr. Hatch got his idea; I hadn't anything to do with making those debts.

Cross examination by Mr. HAY:

Q. I want to refresh Mr. Bunn's mind, whether or not in the negotiations between the new company and the old company you were a stockholder in the new company, were you not?

A. Yes, sir.

Q. Whether or not the question didn't arise as to whether the
47 consideration to be paid by the new company would or would not discharge the debts of the old company?

A. No, no; not by any means. Even at that time there was as much against the old company that had accumulated——at that time they owed the Traders' National Bank thirty-five thousand dollars after the stock had been reduced. It took all of that or nearly all of it to wipe out the debts before it could be turned over free of incumbrance. I think they had debts at the Traders' National Bank for thirty-five thousand dollars that had to be paid before the sale could be made.

Q. Well, as I understand you, there was no expectation that the amount to be received of the new company would discharge the debts of the old company?

A. No, sir. I gave the old company credit for it.

Q. This is the idea: was there any estimate made of the debts of the old company at the time of this transfer?

A. No; I don't think there was; only that the new company, the Republican Company of Chicago was not to pay any of the debts. The property was to be relieved from all the debts of the old company.

Q. You don't remember whether or not the amount of the purchase price that the new company was to pay was at all measured with the liabilities of the old company?

A. No, sir. No; that had nothing to do with it.

48 *Deposition of W. J. Culver.*

W. J. CULVER sworn.

Direct by Mr. KNAPP:

Q. State your name, residence, and business.

A. My name is W. J. Culver; I reside in Chicago; and am an attorney.

Q. Do you know of Mr. Bunn at any time leaving with the firm of Scammon, McCagne and Fuller papers, books, and memorandums pertaining to the business of the Chicago Republican Newspaper Company; and if so, state about what time and what papers and books were left?

A. I was a member of the firm of Scammon, McCagne and Fuller, of Chicago, in the summer of 1871, and there came into their possession at that time from Mr. Bunn, or through his order, a large bundle of books and papers of the Chicago Republican Company, and among them was the minute-book of the first meeting of the stockholders of the company, stubs of stock certificates issued, and I think some books of account. They were left with the firm, as I understand it, of preparing the bill in this case; that's what I used them for.

Q. What has become of all those books and papers, whatever they may have been?

A. They were destroyed in the fire of October 8th and 9th, 1871, in our office. The office was burned and its contents.

Q. Did you prepare the bill in this case?

A. I did. It is in my handwriting.

49 Q. From what memorandum or entries, if any, did you get the statements made in the bill as to the organization of the company, the amount of stock subscribed, and by whom subscribed?

A. As to the organization of the company my information was derived from the charter and from the minute book that I referred to, and from the minute-book I obtained the names of the stockholders and the number of shares subscribed by each of them.

Q. Are you able to state now that the enumeration made in the bill of the various persons subscribing stock to the corporation, and the amount of shares held by them, was correctly copied from the memorandums and books to which you have referred?

A. While I have no present recollection that such is correct, I swore to the bill and know that it must have been so. I know I copied the names and shares from the minute book, but I have no present recollection, of course.

Q. Is the affidavit at the end of said bill, as to its correctness, made and signed and verified by you?

A. It is.

Q. At that time, did you have before you books and papers enabling you to tell whether these averments in the bill were correct and true?

A. I did.

Q. Please state whether the papers and records of the circuit court of the United States for the northern district of Illinois,

50 including the records of 1871, have been in manner destroyed; and, if so, when and where?

A. They were destroyed in the same fire which destroyed the books and papers I have referred to, October 8th and 9th, '71.

Q. Please look at a certificate of judgment attached to the bill herein of a suit and judgment thereon of Charles A. Dana against the Chicago Republican Company, and state what you know of said certificate, and from whom it was obtained?

A. I remember very distinctly obtaining this certificate myself from Mr. Bradley, clerk of the United States court for the northern district of Illinois, for the purpose of using it as an exhibit to this bill.

Q. Can you state whether the signature is the genuine signature of the clerk, and the seal the genuine seal of said court?

A. They are genuine.

Q. Are you personally able to state that a judgment for about that amount was rendered in favor of the complainant herein, as shown in said certificate?

A. Yes, sir; I know this is correct. The judgment was obtained by our firm.

Q. And as shown in the certificate?

A. Yes, sir.

Q. That judgment and decree ever to your knowledge been paid?

A. It never has been paid, nor any part of it.

51 Q. State whether you know of any execution ever having been issued on said judgment, what was done under it, and what return was made by the officer relating to it.

A. An execution was issued under the judgment and placed in the marshal's hands.

Q. Of the northern district?

A. Yes, sir; and by him returned unsatisfied after the ninety days had elapsed, I suppose.

Q. Can you state why it was returned unsatisfied—for what reason given by him?

A. There was no property found on which to levy; no assets of the Chicago Republican Company to be found out of which to make the judgment.

Q. You are personally able to state the fact of the issuance of this execution and return as you have mentioned?

A. Yes, sir; I remember it. I have also stated it in my bill.

Q. Do you know of anything else proper to be stated in this connection?

A. I might say that, to the best of my recollection, I believe every statement of the bill is correct.

Q. Made from memorandums and papers you had before you at the time?

A. Yes, sir; the evidence they contained was then satisfactory; seemed to be complete.

52 Cross-examination by Mr. HAY:

Q. That judgment in a chancery suit?

A. Yes, sir; I will explain that to you. A contract existed between the Chicago Republican Company and Mr. Dana, and in some respect—I don't know what now—it became necessary to reform, and a bill was filed in the case in the court for the northern district of Illinois for the purpose of reforming the contract; it was reformed, and a certain amount of money found to be due and ordered to be paid in ninety days, and at the expiration of ninety days the money not having been paid according to the decree, that order was made. I am not familiar with that contract, because it was never in my hands.

Q. It seems that decree was given before the fire?

A. Yes, sir; this all occurred before the fire. This bill was filled before the fire; then we had everything, of course.

Deposition of O. M. Hatch.

O. M. HATCH sworn.

Direct, by Mr. KNAPP:

Q. What is your name and residence?

A. O. M. Hatch; residence, Springfield.

Q. Can you state when the Chicago Republican newspaper was established—about the time when?

A. The act was approved the 13th of February, 1865.

Q. How long after that was the organization?

53 A. Not long; some time that summer, I think.

Q. Do you know how much of the capital stock was subscribed?

A. I do not.

Q. You state in your former written answer that it was all subscribed.

A. I will not now say that the stock was subscribed; since looking at the act I see that when one hundred thousand dollars were subscribed they were authorized to proceed to business, and my impression is that when that was subscribed and something over they then proceeded to organize; I wouldn't now state when the stock was subscribed.

Q. Were you one of the original subscribers to that stock?
A. Yes.
Q. How many shares did you subscribe for?
A. I don't know.
Q. Cannot you state somewhere near how many shares you subscribed for?
A. I cannot.
Q. Will you state that you didn't subscribe for one hundred?
A. I think I didn't; my recollection is there were two subscriptions and at the last one I wasn't present; didn't subscribe the second time; that's my recollection; I state this upon the hearsay of others; Mr. Dubois particularly.
Q. Do you know the amount of stock that any other man subscribed?
A. No, sir.
Q. Were you present at this original subscription?
A. Only so far as I subscribed myself.
54 Q. Were you present at the original organization?
A. I should say yes.
Q. Do you know who was elected president of the company at its organization?
A. Doctor A. W. Mack.
Q. Will you state what per cent. of your subscription has ever been paid in?
A. I paid the calls, whatsoever was made, and I see that the law requires 50 per cent. to be paid; I take it for granted I paid that, though I have no papers, no receipts that I can lay my hands on.
Q. Haven't you any papers showing the amount of payments you made—the assessments made?
A. I can't find them; I have looked for them, because I wished to refresh my memory; I have had them, but where they are now I don't know.
Q. Can you not now recollect whether you paid as much as $3,000 upon your subscription?
My impression is I paid more than that, but I wouldn't say positively.
Q. You think you have no receipts?
A. I can't find them; I probably took receipts because that was the way the company done business as I remember.
Q. Doesn't your memory serve you at all as to the amount of money paid in?
A. No.
Q. Were you one of the officers at any time?
A. I was a director.
Q. Was there a book kept of the organization?
A. Yes, sir.
55 Q. Do you know what became of that book?
A. Only by what I have heard said. I wouldn't say positively that the book was brought here and delivered to Mr. Bunn, but I rather think it was brought down by Mr. Lincoln Dubois and myself and delivered to Mr. Bunn; what became of it afterwards I don't know.
Q. Do you not remember there was an assessment of 20 per cent. called for on the organization of the company?
A. I don't remember the amount.
Q. Do you remember of more than one assessment being called for?
A. Yes, sir; I am certain I paid two or more.
Q. Will you say you didn't have two hundred shares of stock in that company?

A. Yes, sir; I will say that I didn't have it according to my belief.

Q. Will you say you didn't subscribe for one hundred?

A. I have already said that I didn't believe I did subscribe for a hundred, though I will not swear positively.

Q. Can you give me the names of any persons besides yourself who did subscribe at the original organization of the company?

A. I know some men whose names were on the subscription list. Mr. Dubois was there; Mr. Bunn and Col. Williams was there; Dr. Mack was there; Mr. Leonard——

56 Q. His first name?

A. E. F. Leonard.

Q. Anybody else?

A. There were some Chicago men, but I will not state just exactly who was there among the Chicago men, except Mr. Beckwith; and, I feel confident, Norman Williams, and Mr. Munn—Ira Y. Munn; and there were others, Chicago men, subscribers, but I don't pretend to say who they were, except there was a man by the name of McCague; he was on the original list; he had a good deal to do there with it.

Mr. HAY. What was his name?

A. McCague. Don't know exactly how it was spelled.

Mr. McVeigh?

A. No; McCague.

Q. One of the printers in the office?

A. His son was.

Q. Dr. Mack, you understand, is dead; do you not?

A. Yes, sir.

Q. You think you have no papers in your possession relative to the organization of the company?

A. I have not. (After a pause.) Did I put down Col. Babcock?

Q. You didn't.

A. I will amend my testimony that much.

Cross-examination by Mr. HAY:

Q. So far as you can refresh your memory, if you can think over

57 and name other parties, you may.

A. I will make a list of those I believe to have been the original subscribers; and some circumstances may turn up by which I would be reminded of some I have not named.

By Mr. ORENDORFF:

Was Dana a subscriber?

A. That was long afterwards.

Q. Long after which; after the original subscription?

A. Yes, sir.

Q. Do you know anything about the amount of stock that Dana subscribed?

A. I don't; I can't now say; probably I knew at the time.

Deposition of John Williams.

JOHN WILLIAMS sworn.

Direct by Mr. Knapp:

Q. What is your name and residence?

A. John Williams; reside in Springfield, Illinois.

Q. Were you one of the original subscribers to the stock of the Chicago Republican Newspaper Company, Mr. Williams?

A. I was called upon by some gentlemen; I wasn't an original subscriber; there were several names on it when I subscribed, but they told me they were going to start a paper and would want two thousand dollars; all they would want would be two thousand dollars, and I subscribed that amount, paid that amount. I guess they put down my name.

58 Q. How many shares of stock did you subscribe?

A. Don't remember the amount; two thousand dollars was all I agreed to pay; afterwards another call they made; they said they would require more money—sixteen hundred dollars, and that would pay up the stock in full. I made two payments, one of two thousand dollars and one of sixteen hundred; the sixteen hundred was to pay the stock in full.

Q. Can you state how many shares you did take?

A. No, I can't; originally I was only to pay two thousand dollars; agreed with the gentlemen who called on me; don't know whether they subscribed my name or not; they put it down of course as one of their stockholders; I never had any certificate.

Q. Where did this subscription of stock take place?

A. I think it was in the back room of the bank; two or three gentlemen called on me to know if I would subscribe; they said they would want two thousand dollars, all they would call on me for.

Q. Who were those men?

A. I think Mr. Dubois was one of them and Governor Yates was one of them, I think, and I think Mack might have been present. I think Dr. Mack, Governor Yates and Dubois were the three parties who called at the bank.

59 Q. Do you remember what it was you subscribed to or on?

I don't remember whether I signed my name or not; they said two thousand dollars was all they would want me to pay; a year or two afterwards they came to me and said they were closing it up now and would want sixteen hundred dollars more; I paid that; I understood it was to be in full.

Q. Don't you know the first payment you made was an assessment of twenty per cent. on your subscription?

A. I don't know what per cent. it was. I know they said I wouldn't be called upon for more, but I was called upon for more afterwards.

Q. Ever attend a meeting of the corporators?

A. I never did.

Q. This subscription was made in Springfield?

A. Yes, sir. I was called upon in the counting-room of the First National Bank.

Q. In this city?

A. Yes, sir.

Q. About what time was that?

A. It was before the paper was started—not long before the Chicago Republican newspaper was started; and I paid the two thousand dollars. That was done before the paper started.

Q. How long after was this second payment made?

A. My recollection would be it was a year or two years—about a year, I think.

60 Q. Have you any papers showing these payments?

A. I suppose I have; I could find them all, I suppose; I haven't them at my hand now. I have laid them by for a long while.

Q. You can't remember the number of shares of stock?

A. No, sir; don't recollect the number. I know at the time I thought

money matters were pretty easy with me, and I could take two thousand dollars and not hurt me. I never expected to realize very largely from it. Two thousand was all I expected to have to pay; but sixteen hundred I was called upon for afterwards. They were going to wind it up or something, and that would pay me out.

Q. Who was it came to you for the second payment?

A. I don't remember now; it might have been Mr. Leonard or somebody else—I don't remember—somebody who had some connection with the paper.

Q. Remember where that was?

A. My recollection it was at the bank. They called upon me at the First National Bank.

Q. Will you swear *you swear* you did not subscribe for one hundred shares of stock?

A. I wouldn't state I subscribed for any number; the number of shares I don't recollect. All I do recollect is that I was only to pay two thousand dollars.

61 Q. You can't state what percentage the assessment was made upon this stock?

A. No, sir.

Q. Did you receive any notice of assessments?

A. No, sir. I paid the two thousand dollars about the time they were to start. No assessment about it. That's my recollection about it. It may have been different, however; may have been paid afterwards.

Q. Do you know who else were subscribers to that stock?

A. Well, these parties that called upon me, I think, were all subscribers. I think they told me that Mr. Bunn either had or would subscribe to it. I don't think I read over the list at all, or read over the subscription.

Q. When you made this subscription you were told that two thousand dollars was all you would ever be called upon for?

A. Yes, sir.

Q. Afterwards you were called upon for sixteen hundred, which you paid?

A. Yes, sir.

Q. Ever make any other than those two payments?

A. I think not; don't recollect of any other but the two payments.

62 *Deposition of Dana.*

In the circuit court of the United States for the southern district of Illinois. In chancery.

CHARLES A. DANA
vs.
THE CHICAGO REPUBLICAN COMPANY ET AL.

Deposition of Charles A. Dana for complainant.

The deposition of Charles A. Dana, of Glen Cove, Queens County, State of New York, a witness of lawful age, produced, sworn, and examined on his corporal oath, on Friday, the 16th day of November, A. D. 1877, at the office of the Sun newspaper, at No. 170 Nassau street, in the city of New York, in the county and State of New York, by me, Charles Nettleton, a notary public of the State of New York, in and for the county of New York, residing in said city of New York, duly ap-

pointed by a dedimus potestatum, or commission, issued out of the circuit court of the United States for the southern district of Illinois, and hereto annexed, bearing teste in the name of the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, with the seal of said circuit court affixed thereto, and to me directed as such notary public, for the examination of said Charles A. Dana, a
63 witness in a certain suit and matter in controversy now pending and undetermined in the said circuit court of the United States for the southern district of Illinois, wherein Charles A. Dana is complainant and the Chicago Republican Company et al. are defendants, in behalf of the said complainant, upon the interrogatories of the complainant, which are attached to or inclosed with the said commission, and upon none others, no cross-interrogatories being attached or inclosed therewith.

And I further certify that having been produced to and personally came before me at the time and place herein aforesaid, the said Charles A. Dana, the witness named in the commission hereunto annexed, to depose in said cause, and being of lawful age and sound mind and being by me first duly examined, cautioned and sworn to tell the truth, the whole truth, and nothing but the truth touching his knowledge of the matter and things in controversy in said cause, deposed and said as follows.

CHARLES NETTLETON,
Notary Public, &c.

Int. 1. What is your name, age, occupation, and place of residence?

64 A. My name is Charles A. Dana; I am 58 years of age; I am an editor by occupation; my place of residence is Glen Cove, Queens County, New York.

Int. 2. Do you know the parties to this suit, or either and which of them; and how long have you known them respectively?

A. I know all the parties to this suit except Ira Y. Munn; and I have known them for ten years. I myself am the plaintiff.

Int. 3. Were you ever connected in any way with the Chicago Republican Company? If so, state when you became so connected, what the same was, and when did it terminate? State fully all the facts of such connection.

A. I was connected at one time with the Chicago Republican Company. I became connected with it about August, 1865, as the editor of its newspaper, the Chicago Republican, published at Chicago, Illinois, and I remained so connected with it until about May, 1866. Prior to August, 1865, Dr. A. W. Mack, of Chicago, applied to me at Washington, D. C., to become such editor. He informed me that the whole stock of the company was nominally $500,000; that Messrs. John Will-
65 iams, Jacob Bunn, and their associate stockholders had actually paid in $80,000 in cash; and that there remained stock of the nominal value of $100,000 still unissued, which had been reserved to be issued to me as full paid stock, as one of the inducements to become the editor of the paper. Upon the company's agreement to issue this to me as full paid stock, according to their own proposition, and also to pay me a salary of $7,000 a year, I assumed charge of the paper at the time I have stated. The stock was actually issued to me as full paid up stock.

About January, 1866, the company had got out of money for the con-

duct of the paper. Mack, who was the business manager, went down to Springfield, Illinois, to see Gen. John Williams, the president of the First National Bank of Springfield, and Mr. Jacob Bunn, who carried on a private bank of his own there. Both of these gentlemen had been most active in establishing the paper, and both were stockholders in the Chicago Republican Company. When Mack came back to Chicago he told me they had concluded to levy an assessment on all the stock, and wanted me to pay my share, which, at the same rate he said the others had paid, or had agreed to pay, would be $10,000. He then represented to me, as indeed had always been stated, that both
66 Bunn and Williams had paid their original subscription to the stock in full in cash. He further said that Bunn and Williams had offered and agreed to furnish the $10,000 which was to pay my assessment upon my notes for that amount, secured by my stock in the company as collateral. Relying upon his representation that the other stockholders had agreed to pay such an assessment, I was thereby induced to give, and did give him my two notes for $5,000 each, one of which went to Gen. Williams' bank, and the other, I think, to Jacob Bunn. At the same time, about January, 1866, I gave Mack the certificates of all my stock in the Chicago Republican Company, to be deposited as collateral security for the payment of the two notes, and I have never seen any of that stock since.

At a meeting of the stockholders of the company, held about May 1st, 1866, when my separation from the paper was agreed upon, and before the maturity of these two notes, it was agreed between me and the company that I should give up my contract with it as editor of the Chicago Republican, on condition that it should pay me $10,000 in cash, and should also pay these notes to Bunn and Williams, which I have already mentioned. The written instrument, embodying this agree-
67 ment, was delivered by me to the law firm of Scammon, McCagg, and Fuller, my counsel, at Chicago, in order that they might bring suit to enforce it, and I am informed by Mr. McCagg, and believe that it was destroyed in the great fire at Chicago, in October, 1871. My recollection, however, is that a mistake was made in that instrument as to the number of my notes, though not as to the aggregate amount, and that only one note for $10,000 to Bunn and Williams was mentioned. I therefore brought suit in Illinois for the reformation of the contract in this respect, and I am informed by Mr. McCagg, one of my counsel in that suit, that the contract was judicially reformed in accordance with the facts as I have stated them. Upon the payment to me from first instalment of the sum of $10,000 provided for in this agreement very shortly after it was executed, I ceased to be the editor of the Chicago Republican.

Int. 4. Did you ever take or have any stock in said company? If so, when, and how did you become the owner of it? Give the number of shares so held by you, the par value of a share, how much, if any, you have paid thereon, and what you have done with the same, and where?

68 A. I never took or had any stock in the Chicago Republican Company, except that mentioned in my answer to the last clause of the foregoing third interrogatory. I became the owner of that stock about August, 1865, and received it as full paid up stock, it being one of the inducements expressly offered me by A. W. Mack, acting in behalf of the corporation, to become the editor of the paper, and being subsequently issued to me under and in accordance with his offer. I don't remember the number of shares or the par value of each, but the

nominal value of the whole, which was issued to me as full paid up stock, was $100,000. Of course I did not pay any money thereon, nor did I ever sign any subscription paper. As already stated, I delivered this stock to Dr. Mack, together with the notes for Messrs. Williams and Bunn, when I signed the notes at the office of the paper in Chicago. I have never seen the stock since.

Int. 5. Did the said company ever become indebted to you? If so, when did said obligation accrue, and for what? And did you ever bring suit against the company? If so, state in what court, and, as fully as you can, the nature and object of the suit, and the result
69 thereof.

A. The Chicago Republican Company became indebted to me about the 1st day of July, 1866, by reason of its failure to fulfill its contract, which I have mentioned in response to the third interrogatory, to pay my note to the First National Bank of Springfield, of which Gen. John Williams was president. I brought suit against the company in the circuit court of the United States for the northern district of Illinois, to have the contract reformed so as to refer expressly to two notes of $5,000 each, instead of one note of $10,000, and to compel the company to retire or pay the note to the First National Bank of Springfield. I am informed by Mr. McCagg, one of my counsel in that suit, that a decree was entered that the notes be retired within a specified time, in default of which judgment was to be entered against the company for the amount of the note, with interest and costs, and that, as the note was not retired, judgment was entered in my favor against the company, in the spring of 1871, for $6,419.17, and costs.

Int. 6. State, if you can, who were the subscribers to the stock
70 originally of said company, and particularly if the defendants Osias M. Hatch and John Williams, of Springfield, Illinois, were subscribers thereto. If yea, state the number of shares of said stock they severally held or owned, if any, as near as you can.

A. I know that the defendants Williams, Bunn, Hatch, and Dubois represented themselves as subscribers to the stock originally. I don't know the number of shares held or owned by each. On the 20th of November, 1872, I heard the defendant John Williams testify in the city of New York, before John M. Nash, esq., referee, in a case pending in the supreme court of this State between the First National Bank of Springfield, Illinois, and myself; and he then and there stated under oath in my presence and hearing that he thought he had subscribed $10,000 to the stock of the Chicago Republican Company, but he did not pay it all up; and that he thought he had paid up $3,600 in all.

Int. 7. When did said last named persons acquire their stock, if any, and how much did they ever pay thereon, if known to you?

A. All the personal knowledge I have on the subject of this interrogatory I have already stated.

71 Int 8. State, if you can, when said company was organized, and the amount of assessment ever called for or made upon the subscription to its capital stock.

A. It was organized prior to August, 1865, when I took charge of its paper, as I have already stated. Mack called upon me to pay the $10,000 represented by my two notes, as an assessment on my full paid up stock, but I was told a few days after I had given these notes, by Corydon Beckwith, esq., that no valid assessment could be made upon the stock under the laws of Illinois. So far as I have been able to learn, no other stockholder ever paid or was called upon to pay anything by way of assessment. As to calls upon the subscribers to the stock to make pay-

ments upon their subscription, I only know that on the occasion I have already mentioned in my answer to the sixth interrogatory I heard the defendant John Williams speak of more than one call having been made.

Int. 9. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your
72 examination or the matters in question in this cause? If yea, set forth the same full and at large in your answer.

A. I don't recall anything else at present.

CHARLES A. DANA.

Subscribed in my presence and sworn to before me at the city of New York, in the county and State of New York, on this 16th day of November, A. D. 1877.

Witness my hand and official seal.

[L. S.] CHARLES NETTLETON,
Notary Public for New York County, N. Y.

STATE OF NEW YORK,
City & County of New York, ss:

I, Charles Nettleton, a notary public of the State of New York, in and for the county of New York, and residing in said city of New York, duly appointed to take the deposition of the said Charles A. Dana, a witness whose name is subscribed to the foregoing deposition, do hereby certify that previous to the commencement of the examination of the said Charles A. Dana as a witness in the said suit between the said Charles A. Dana, complainant, and the said Chicago Republican Company et al., defendants, he was duly sworn by me, as such
73 notary public, to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy between the said Charles A. Dana, complainant, and the said Chicago Republican Company et al., defendants, so far as he should be interrogated concerning the same; that the said deposition was taken at the office of the "Sun" newspaper, at No. 170 Nassau street, in the city, county, and State of New York, on the 16th day of November, A. D. 1877, between the hours of eight a. m. and six p. m. of that day, and that said deposition was written down by Thomas F. Williams, a clerk appointed by me for that purpose, and a disinterested third person not of kin, counsel or attorney to either of the parties or in any wise interested in the event of this cause; and that after said deposition was taken by me, as aforesaid, the interrogatories and answers, as written down, were read over to the said witness, and that thereupon the same was signed and sworn to by the said deponent, Charles A. Dana, before me, the oath being administered by me as such notary public, commissioner, at the place and on the day and year last aforesaid, and between the hours aforesaid.

And I further certify that the foregoing deposition of Charles A. Dana was then and there reduced to writing by the said Thomas F. Williams, in my presence and under my direction, and in the
74 presence of the said deponent, and was to him by me carefully read over, and by him subscribed in my presence, after having been so reduced to writing, and that the reason for taking said deposition was, and is, that the deponent, the witness, Charles A. Dana, resides at Glen Cove, Queen's County, State of New York, more than one hundred miles from Springfield, Illinois, where said cause is appointed to be tried.

I further certify that I am not of counsel or attorney to either of the parties to this suit, nor interested in the event of this cause, and that it being impracticable for me to deliver said deposition with my own hand into the court for which it was taken, I retained the same for the purpose of being sealed up by me, and speedily and safely transmitted by mail to the said court for which it was taken, and to remain under my seal entire until opened; that the fee for taking the said deposition, $15\frac{50}{100}$, has been paid to me by said complainant; neither party to said cause was represented by counsel at the taking of said deposition, no person being present at the taking of the same but the said witness and me, notary public, taking the same.

In witness whereof, I have hereunto set my hand and affixed my official seal this 16th day of November, A. D. 1877.

[L. S.] CHARLES NETTLETON,
75 *Notary Public for New York, State of New York,*
No. 117 *Broadway, N. Y. City.*

TETIMONY FOR DEFENDANTS.

Deposition of O. M. Hatch.

CHARLES A. DANA
vs.
JOHN WILLIAMS, OZIAS M. HATCH, AND others.

In the circuit court of the United States for the southern district of Illinois.

Testimony of OZIAS M. HATCH, taken orally on the hearing of the above cause, was as follows:

Said Hatch testified that he subscribed for one hundred shares of the original capital stock of the Chicago Republican Company, the shares being one hundred dollars each, and paid twenty per cent. of the subscription at the time of subscription; that subsequently there was a call for an additional ten per cent. of the subscription on capital stock paid to be paid in, and that he paid that, making in all thirty per cent. that he paid, and that there had been no other call upon the subscription. Witness testified that the subscription was made in a small blank book, to which there was a heading in form substantially as follows:

76 "We, the subscribers hereto, agree to take the number of shares set opposite our names respectively in the stock of the Chicago Republican Company, and to pay for the same as called for by said company."

The subscribers' names were underwritten to this with the amount of stock subscribed by each, carried into a column on the right-hand side.

Made part of record.

S. H. TREAT.

Rec'd of Hon. O. M. Hatch two thousand dollars, being 20 % assessment upon his stock of $10,000 in the Chicago Republican Co.

Chicago, Ap'l 12th, 1865.

A. W. MACK,
Pres. & Ex-Off. Treas.

OFFICE OF THE CHICAGO REPUBLICAN,
93 *Washington street, Chicago, Jan'y 10th*, 1866.

Rec'd of O. M. Hatch one thousand dollars, being in full for assessment of 10 % upon his capital stock in the Chicago Republican Company as per order of the board of directors.
Jan'y 9th, 1866.

A. W. MACK,
Pres. Chic. Rep. Co.

[2 c. rev. stamp.]

77 And afterwards, to wit, on Monday, the said 6th day of January, at the January term of said court, in the year of our Lord eighteen hundred and seventy nine, the following further proceedings were had in said court and entered of record, to wit:

Decree.

CHARLES A. DANA
vs.
THE CHICAGO REPUBLICAN COMPANY, JESSE K. DUBOIS, JOHN WILLIAMS, OZIAS M. HATCH CORYDON BECKWITH, and IRA Y. MUNN, survivors of A. W. MACK, deceased. } In equity.

Now, on this day comes the complainant herein by Robinson, Knapp and Shutt, his solicitors, and the defendants Ozias M. Hatch and John Williams, by Milton Hay & Alfred Orendorff, their solicitors; and upon motion of the complainant's solicitors the bill of complaint herein is dismissed as against the said defendants, The Chicago Republican Company, Jesse K. Dubois, Corydon Beckwith, and Ira Y. Munn. And thereupon this cause came on to be heard at this term, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz:

78 That the said complainant, Charles A. Dana, do have and recover of the said Ozias M. Hatch and John Williams the sum of nine thousand three hundred and ninety-eight dollars and seventy-two cents ($9,398 $\frac{72}{100}$), being the amount due this day to the complainant upon the judgment rendered in his favor on the 12th day of April, A. D. 1871, against the said The Chicago Republican Company by the circuit court of the United States in and for the northern district of Illinois, as set forth in complainant's bill herein, and that he also have and recover of the said defendants Ozias M. Hatch and John Williams his costs in this suit expended, and to be taxed by the clerk of this court.

It is further ordered, adjudged, and decreed that of the said sum of money adjudged as aforesaid, not more than the sum of seven thousand dollars, together with interest from this day at the rate of six per cent. per annum on said sum of seven thousand, shall be made and collected of or from either of said defendants Ozias M. Hatch or John Williams, respectively, the said sum of seven thousand dollars being the amount the court finds each of said defendants to owe and be indebted to the said The Chicago Republican Company; it is further ordered that the

79 complainant have execution against the said defendants aforesaid as in cases of judgments at law.

And afterwards, to wit, on Saturday, the 1st day of March, at the term and in the year last aforesaid, the following further proceedings were had in said court, and entered of record in said cause, to wit:

Order allowing appeal.

CHARLES A. DANA
vs.
OZIAS M. HATCH AND JOHN WILLIAMS. } In chancery.

And now, on this 1st day of March, 1879, come again the parties, by their counsel, and the defendants pray an appeal to the Supreme Court of the United States, which is allowed them, on their severally entering into bonds to the complainant, in the penalty of ten thousand dollars each, to be approved by the court, and conditioned as the law directs; and the defendants thereupon present their several bonds, which are approved by the court, and the court doth order that the appeal thus perfected shall operate as a supersedeas of the decree entered in this cause.

And it is thereupon stipulated and agreed by the parties, that the appeal shall be submitted at the next term of the Supreme Court of the United States, in pursuance of the twentieth rule of said court.

80 *Appeal bond of Hatch.*

CHARLES A DANA
vs.
CHICAGO REPUBLICAN COMPANY, JESSE R. DUBOIS, OZIAS M. HATCH, JOHN WILLIAMS, CORYDON BECKWITH, AND IRA Y. MUNN. } In chancery.

Know all men by these presents, that we, Ozias M. Hatch, as principal, and Z. A. Enos, as security, are held and firmly bound unto Charles A. Dana in the sum of ten thousand dollars, to be paid to the said Charles A. Dana, his executors, or administrators. To which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals and dated this twenty-second day of February, A. D. 1879.

Whereas the above-named Ozias M. Hatch hath prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above entitled suit by the circuit court of the United States for the southern district of Illinois:

Now, therefore, the condition of this obligation is such that if the above-named Ozias M. Hatch shall prosecute his appeal to effect, and answer all damages and costs if he shall fail to make good his
81 plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

O. M. HATCH. [SEAL.]
Z. A. ENOS. [SEAL.]

(Endorsed:)
Approved.

S. H. TREAT.

(Also endorsed:)
Filed March 1st, 1879.

J. A. JONES, *Clerk.*

Appeal bond of Williams.

CHARLES A. DANA
vs.
CHICAGO REPUBLICAN COMPANY, JESSE K. DUBOIS, OZIAS M. HATCH, JOHN WILLIAMS, CORYDON BECKWITH, & IRA Y MUNN. } In chancery.

Know all men by these presents that we, John Williams as principal, and George N. Black as surety, are held and firmly bound unto Charles A. Dana in the sum of ten thousand dollars, to be paid to the said Charles A. Dana, his executors or administrators, to which payment well and truly to be made we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals and dated this twenty-second day of February, 1879.

Whereas the above-named John Williams hath prosecuted an
82 appeal to the Supreme Court of the United States to reverse the decree rendered in the above entitled suit by the circuit court of the United States for the southern district of Illinois:

Now, therefore, the condition of this obligation is such that if the above named John Williams shall prosecute his appeal to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

JOHN WILLIAMS. [SEAL.]
GEO. N. BLACK. [SEAL.]

(Endorsed:)
Approved.

S. H. TREAT.

(Also endorsed:)
Filed March 1st, 1879.

J. A. JONES, *Clerk.*

83 UNITED STATES OF AMERICA, *ss:*
Southern District of Illinois, ss:

In circuit court.

I, John A. Jones, clerk of said court, do hereby certify that the fore going is a true and correct copy of all the papers filed and proceedings thereon had in a certain cause wherein Charles A. Dana is complainant and The Chicago Republican Company, Jesse K. Dubois, Ozias M. Hatch, John Williams, Corydon Beckwith, and Ira Y. Munn are defendants, as fully and completely as the same appear of file and of record in my said office.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at Springfield, in said district, this 27th day of May, A. D. 1879.

[SEAL.]

J. A. JONES,
Clerk U. S. C. C., S. Dist. Ills.

(Indorsement on cover:) No. 1059. Ozias M. Hatch and John Williams, appellants, vs. Charles A. Dana. S. Illinois C. C. U. S. Filed 10th November, 1879.

Supreme Court of the United States

APPEAL FROM SOUTHERN DISTRICT OF ILLINOIS.

JOHN WILLIAMS AND OZIAS M. HATCH,

VS.

CHARLES A. DANA.

BRIEF AND ARGUMENT FOR APPELLANTS,
By D. T. LITTLER.

Supreme Court of the United States

APPEAL FROM SOUTHERN DISTRICT OF ILLINOIS.

JOHN WILLIAMS AND OZIAS M. HATCH,

VS.

CHARLES A. DANA.

BRIEF AND ARGUMENT FOR APPELLANTS,

By D. T. LITTLER.

NOTE—Our inability to timely procure the printed record, prevents reference to the paging of the record—as no statement of the contents of the record are disputed, we hope this may be excused in this instance.

This was a Creditor's Bill, in the Court below, by Charles A. Dana, appellee, suing in behalf of himself and of all other creditors of the Chicago Republican Company, &c., against the Chicago Republican Company, and Jacob Bunn, Jesse K. Dubois, John Williams, O. M. Hatch, Corydon Beckwith, and Ira Y. Munn, survivors of A. W. Mack, deceased, who were alleged to be citizens of the State of Illinois.

The Bill sets forth the incorporation of the "Chicago Republican Company" under an act of the General Assembly of the State of Illinois, approved Feb. 13th, 1865. Bill makes special reference to said act for greater certainty as to its provisions. The capital stock, authorized by said act, was $500,000, to be divided into shares of $100 each, with the right to said corporation to commence business whenever $100,000 of stock should have been subscribed and fifty per cent. thereof paid in. The purpose of the corporation was the publication of a newspaper, and the printing and publishing business generally.

The Bill sets forth the following subscriptions of stock, as having been made to the capital stock of said corporation, to-wit:

A. W. Mack,	1250	Shares.
Jacob Bunn,	500	"
Jesse K. Dubois,	250	"
John Williams,	100	"
O. M. Hatch,	100	"
Corydon Beckwith	250	"
Ira Y. Munn,	50	"

That on the 11th day of April, 1865, a meeting of said subscribers of stock was held and an organization of said Company had by the election of a Board of Directors and secretary, and that an assessment of twenty per cent. was made upon the stock subscribed and the Company thereupon commenced business under its charter. Bill sets forth that complainant does not know of any other subscriptions to the capital stock of said Company than those set forth, and does not know the names of any other stockholders of said Company, but prays if there are any such, he may, upon discovery, make them parties defendant to the Bill.

Bill charges that no more than twenty per cent. was ever paid by any one of said subscribers on their subscriptions, and that there remains unpaid eighty per cent. on each and every one of said subscriptions, of the amount thereof.

Bill avers that on or about the 7th day of October, 1870, the "Chicago Republican Company" sold and transferred all the property, assets, rights, credits, etc., belonging to it as a corporation, to a corporation called the "Republican Company," then recently organized under the general laws of the state, for the sum of ninety-nine thousand seven hundred dollars, and paid the sum so received upon said sales to Jacob Bunn, as a creditor of said former company, for indebtedness due him for moneys advanced said Company, and thereupon said "Chicago Republican Company" ceased to do business, and has not since done business. Avers that since that time A. W. Mack, one of said subscribers of stock has deceased, and that ever since that time said "Chicago Republican Company" has been insolvent, and has no property or assets with which to pay its debts.

Bill sets forth the recovery of a judgment against the "Chicago Republican Company" by complainant on the 12th day of April, 1871, in the Circuit Court of the United States for the Northern District of Illinois for the sum of $6,419, upon which an execution duly issued and was returned "no property found," and avers that the judgment still remains unpaid and unsatisfied.

Bill sets forth that complainant is advised and believes that there are other creditors of said Company, besides himself, whose demands are unpaid.

Bill charges that defendants neglect and refuse to call in the unpaid subscriptions, or to make assessment therefor, or to pay the same, and refuse and neglect to pay said judgment, &c., &c., contrary to equity and good conscience.

Bill makes the "The Chicago Republican Company," Jacob Bunn, Jesse K. Dubois, John Williams, O. M. Hatch, Corydon Beckwith and Ira Y. Munn, parties defendant, and calls upon defendants for answer waving oath—prays that an account may be taken of what is due from said company to all persons who may elect to come in as creditors under this Bill, or the decree to be entered in pursuance thereof—that an account be taken of the amounts respectively paid by the several defendants subscribers of stock upon their subscription of stock, and of the amount yet unpaid thereon, and that said defendants (subscribers of said stock) be decreed to pay so much of the balance found unpaid on their respective stock subscriptions as will be sufficient to pay the debts of said company when so ascertained. That a Receiver be appointed and said co-defendants of said Company herein named be directed to pay in to the Receiver just proportions so much of the capital stock of said Company subscribed by them and remaining unpaid, as will be sufficient to pay the said judgment and costs, and the debts of such other creditors as may choose to join said complainant and come in under said decree, and that the Receiver be directed to apply the same in discharge thereof, &c.

Jacob Bunn, John Williams, O. M. Hatch, Jesse K. Dubois, Croydon Beckwith, and Ira Y. Munn were made parties defendant to the Bill, and summons for them issued to the Marshal of the Southern District of Illinois. The summons was returned served upon Bunn, Williams, Hatch and Dubois, but not served upon Beckwith and Munn. The return as to the two latter defendants being—that they were not found in the district.

Bunn, Hatch, Williams and Dubois severally answered the Bill.

Hatch's answer—Admits act of incorporation as alleged; admits that capital stock to the amount of $500,000 was subscribed, but does not admit the distribution of the stock as alleged; admits that the requisite amount was paid in to authorize organization of company, and company proceeded to organize and to operate and do business; answers that he paid thirty per cent. of his stock, and other subscribers paid in like amounts; admits that company went out of business about the month of October, 1870, and sold all its material and property to another corporation called the "Republican Company," and that said former company has not since transacted business. Is ignorant whether said company owes any indebtedness to complainant or any other person or persons. Admits that since said sale no assessment has been made by said company or its officers, on the stockholders, or any of them for the purpose of paying any debts thereof,

and that he does not know whether the company is insolvent or not. Denies any confederation to defraud complainant, or any other person. Denies recovery of a judgment and issue of execution as alleged in complainant's Bill, but admits if any such judgment was rendered, that it was not paid.

The answer further sets forth in response to those portions of the Bill calling for a discovery of the names of the stockholders of said company in order that they may be made defendants to Bill:

"That about the first day of August, 1866, the said company determined to reduce its capital stock from $500,000 to $200,000, and did at that time at a meeting of all the stockholders, regularly held, reduce its capital stock to said last named sum, and did thereupon call in all existing certificates of stock and reissue to the holders thereof new certificates for two-fifths of the amount originally held by them. That since said transfers various transfers of portions of the new, or substituted stock, have been made, but respondent does not know the extent of the transfers, nor to whom, nor by whom they have been made. Answering further, respondent says that Jesse K. Dubois, Jacob Bunn, John Williams, the personal representatives of A. W. Mack, Shelby M. Cullom, Edward F. Leonard, R. R. McCabe, M. T. Groesbeck, C. C. Wilcox, Corydon Beckwith, Amos Babcock, Alfred L. Smith, C. M. Pugh, James Barclay and Samuel A. Nickerson are now holders and owners of portions of said stock, and were such owners and holders when the Bill was filed. Respondent asks that in conformity with the prayer of the Bill all said named holders be made defendants herein, and that an account be taken of the shares held by each, and of the amount of money already paid upon each share, if it shall appear that said company is indebted to complainant, and that said stockholders are liable for such indebtedness, &c., &c.

Bunn answers substantially as Hatch, admitting himself to be a stockholder, refers to and adopts the answer of Hatch, in respect to the number and names of other stockholders, and prays that complainant be required to make them defendants. Sets forth that complainant was himself a stockholder, and should contribute his just proportion of said debt. Sets forth that the company is indebted to him. Respondent further sets forth that on the 7th of October, 1870, the time at which the "Chicago Republican Company" sold its material and assets to the "Republican Company," said former company was indebted to himself and others in the sum of $111,408.18, and that said company is still indebted to him the sum of about $76,130.70 on account of said indebtedness, over and above all moneys or property received by him from said company. Prays that all stockholders may be made defendants; that an account be taken between all the parties and that an assessment be made in just proportions as well to pay the

debt of complainant as to pay respondent such balance due him as aforesaid, &c., &c.

Dubois and Williams adopt the answer of Hatch as their answer.

Replications were filed to the answers.

Subsequently on the day of A. D., 187 , complainant dismissed his Bill as to Jacob Bunn, and upon the hearing of the cause the complainant further dismissed his Bill as to the "Chicago Republican Company" Jesse K. Dubois, Corydon Beckwith and Ira Y. Munn.

DECREE.—That complainant do have and recover of the said Ozias M. Hatch and John Williams the sum of nine thousand three hundred and ninety-eight dollars and seventy-two cents, ($9,398.72) being the amount due the complainant upon the judgment rendered in his favor on the 12th day of April, 1871, against the "Chicago Republican Company," by the Circuit Court of the United States for the Northern District of Illinois, as set forth in Complainant's Bill, and that he also have and recover of said defendants his costs in this suit expended. And further ordered and decreed that of the sum of money so adjudged as aforesaid, not more than the sum of seven thousand dollars, together with interest at the rate of six per cent. per annum shall be made and collected of or from either of said defendants respectively, the said sum of seven thousand dollars being the amount the court finds each of said defendants to owe and be indebted to the "Chicago Republican Company"—ordered that complainant have execution against the said defendants aforesaid as in cases of judgments at law.

Hatch and Williams severally appeal and assign as errors:

1st. That the court erred in allowing the Bill to be dismissed as to the defendants Bunn, Dubois, Beckwith, Munn and the Chicago Republican Company.

2d. That the court erred in proceeding to a decree against the defendants Hatch and Williams, without and before requiring all the shareholders of Chicago Republican Company, to be made defendants to the Bill, and brought in, to the end that all shareholders should be decreed to pay ratably any indebtedness established against the Chicago Republican Company.

3rd. That the court erred in not ascertaining by a reference or otherwise whether there was other indebtedness than that of complainant due from the Chicago Republican Company, and in not ordering an account to be taken thereof, to the end that provision be made therefor in any decree to be rendered in the premises.

THE EVIDENCE.

Premising that the evidence in the case sufficiently proved the indebtedness from "The Chicago Republican Company" to the complainant as

charged in his bill, and as found by the decree of the court, and that the amount found as unpaid upon the respective subscriptions of Hatch and Williams was correct, we abstract only so much of the evidence as is pertinent to the errors assigned.

The bill charges that Jacob Bunn, John Williams, O. M. Hatch, Jesse K. Dubois, Coryden Beckwith and Ira Y. Munn are stockholders in The Chicago Republican Company, and makes them all defendants, and prays for a discovery of all other stockholders, and that when made known that they be made defendants.

Bill charges that the capital stock was subscribed for as follows:

A. W. Mack, - - - -	1250 shares.
Jacob Bunn, - - - -	500 "
Jesse K. Dubois, - - -	250 "
John Williams, - - - -	100 "
O. M. Hatch, - - - -	100 "
Corydon Beckwith, - - -	250 "
Ira Y. Munn, - - - -	50 "

W. J. CULVER swears that the original records, minutes, books, etc., of The Chicago Republican Company were in the office of Scammon, McCague & Fuller, in Chicago, at the time of the great fire in 1871, and were destroyed by that fire; that previous to that fire the bill in this cause had been prepared from these records, minute books, &c.; that the minute books of said company showed that the capital stock of said company had been subscribed by the persons named and in the proportions charged in the bill.

O. M. Hatch in his testimony admits he was one of the subscribers for stock. He was asked to give the names of other subscribers for stock. He answers that Mr. Dubois, Mr. Bunn, John Williams, Dr. Mack, and E. F. Leonard were on the subscription list. There were some Chicago men also, but would not undertake to say just exactly who except Mr. Beckwith, and felt confident that Norman Williams and Ira Y. Munn were; and there were other Chicago men, subscribers, but don't pretend to say who except a man by the name of McCague. He afterwards amended his testimony by adding the name of Col. Babcock to the list of subscribers for stock. Upon the hearing of the cause this witness was further orally examined and testified as follows:

"Said Hatch testified that he subscribed for one hundred shares of the original capital stock of The Chicago Republican Company, the shares being one hundred dollars each, and paid twenty per cent. of the subscription at the time of making the same; that subsequently there was a call for an additional ten per cent. of the subscription on capital stock to be paid in, and that he paid that, making in all thirty per cent. that he paid, and

that there had been no other call upon the subscription. Witness testified that the subscription was made in a small blank book, to which there was a heading in form substantially as follows:

"We, the subscribers hereto, agree to take the number of shares set opposite our names respectively in the stock of The Chicago Republican Company, and to pay for the same as called for by said company."

"The subscriber's names were underwritten to this with the amount of stock subscribed by each carried into a column on the right hand side."

Jacob Bunn in his testimony says:—He was a subscriber for stock—five hundred shares. The names and amounts subscribed by each as charged in the Bill is read over to witness, and he is asked whether he recollects that the persons so named were subscribers, and whether the subscriptions were for the amounts named? Witness answers:—I presume that is correct. The names are familiar to me, but I have no personal recollection of the amounts.

Witness is asked as to whether the Chicago Republican Company was solvent or insolvent? Answer—"It is pretty hard to say. I guess nobody holds any claims against it, that I have heard of, unless it is this judgment of Dana's, and myself. If they owe anybody it is me. I paid the debts of the concern. I know that I have a claim against it. That Answer of mine (referring to the answer in the cause) will show everything I knew about it, at the time it was made." Witness further said that he had placed all the records and papers, &c., of the Chicago Republican Company in the hands of Scammon, McCague & Fuller, under whose charge they were at the time of their destruction by fire, for the purpose of bringing suit against the Company for my benefit to recover for advances I had made, and what they owed me."

ACT OF INCORPORATION.

The act is in the ordinary form of an incorporating act for the formation of a corporate body, "for the purpose of a printing, publishing and binding business, in the city of Chicago, Illinois, with a capital stock of five hundred thousand dollars, to be divided into shares of one hundred dollars each, and providing that whenever as much as one hundred thousand dollars shall be subscribed, and fifty per cent. thereof paid in, the corporation may organize and proceed to business."

"Sec. 7.—The said stockholders shall be liable in proportion to the amount of stock severally held by them for all debts contracted by the said corporation during the time they were stockholders, and for six months after the assignment of the stock so held by them respectively."

BRIEF AND ARGUMENT.

It will be observed that this was a creditor's Bill, upon a judgment rendered in favor of the complainant against a corporation known as "The Chicago Republican Company"—a return of "no property" upon an execution upon the judgment, and an allegation of insolvency of the corporation. The Bill as framed, is filed on behalf of complainant and all other creditors who may come in, &c. The Bill alleges not only the insolvency of the corporation, but that prior to the filing of the Bill the corporation had disposed of all its property and assets, and had ceased doing any business, and alleges upon information and belief that there was other indebtedness due from the corporation as well as that due to complainant.

The Bill alleges that there was a subscribed capital of $500,000 to the corporation by seven named subscribers, one of whom is dead and insolvent, and it makes the six surviving, defendants to the Bill. There is neither averment nor proof that any of said surviving stockholders are either insolvent or out of the jurisdiction of the court. Before or at the hearing of the cause, the Bill was dismissed as to all the defendants but Hatch and Williams, without any allegation or showing as to why said defendants were dismissed. There was not only the averment in the Bill that the parties so dismissed were stockholders of the Chicago Republican Company, but the fact was proved by the testimony of Culver, Hatch and Bunn. The testimony of Hatch was that not only were the parties so dismissed stockholders, but that other named persons were also stockholders.

In addition to this the Bill contained the averment upon the belief and information of complainant, that the defendant corporation not only owed the debt to him set forth, but also owed other indebtedness, and the testimony of Bunn taken in the cause showed a large amount of indebtedness due and owing to him by the corporation.

Disregarding this state of facts without a reference of the cause for the purpose of ascertaining the indebtedness or for allowing other creditors to prove, or for the purpose of ascertaining all stockholders liable to contribution, the court allowed the complainant to dismiss as to all defendants but the two named, and the complainant to proceed to a decree against them.

Undoubtedly this was done upon the theory that the creditor of an insolvent corporation is at liberty to proceed at his election against one or more of the subscribers of unpaid stock for the amount of his debt, to the extent of such unpaid subscriptions, without an account being taken of other indebtedness, and without bringing all the stockholders in for

contribution. This is the question in the case, and is presented by the assignment of errors. The terms of subscription for this stock (the subscription book being destroyed) is set forth in the testimony. The terms were in the ordinary form, "to pay for the shares or to pay the sums set opposite their names, as the same should be called for by the Company."

The subscribed stock of a corporation excepting so much thereof as the charter or law may require to be paid in preliminary to organization or the commencement of business, is well understood to be a reserved fund in the hands of the subscribers to be called for and paid in only to the extent of the corporate uses therefor, and it is of the very essence of this subscription contract, clearly imported by its terms, as well as the reason of it, that calls for the payment of this reserve fund or capital shall be proportionate upon all the stock. Under the contract of subscription the board of directors of the corporation would have no right, for a conceded corporate purpose, to assess the stock of A to the full extent of his unpaid subscription and leave unassessed the unpaid stock of all other subscribers.

"When a court of equity is invoked to supply a remedy for the unperformed duty on the part of the directors of a corporation, can it properly go farther than to perform, or cause to be performed, according to its own methods, the unperformed duty of the delinquent board of directors?

Shall the methods adopted by a court of equity under such circumstances conform themselves to the spirit and substance of the contract of subscription, or will the court disregard this, and enforce the contract differently from what was ever contemplated in the contract of subscription? The plain import of the subscriber's contract being to pay in his unpaid subscription *proportionately* with other subscribers, as corporate uses may require, will a court of equity disregard this element of the contract and compel him to discharge a corporate burden regardless of the rule of proportion?

Whilst upon general principles and correct reasoning it would seem to be plain, that a court of equity should enforce the liability of the stockholder only in the spirit of the contract of subscription, and as it was contemplated it should be enforced, it must be conceded that there is not wanting authority in the desisions of courts for the contrary position. But whilst a contrariety of holding must be conceded, we think it will nevertheless be found, upon a comparison of the decisions, that the weight of authority is in favor of the position we contend for.

In many of the states the liability of a stockholder in regard to unpaid subscriptions is a matter of statutory regulation, and decisions under those statutes of course throw no light upon the question here.

The remedy sought in this case by the complainant is in virtue alone of the general equity jurisdiction of the court in the premises. The grounds of this general equity jurisdiction is thus stated:

"A court of equity will never allow a trust to fail on account of the failure or refusal of a trustee to perform his duty. When, therefore, the creditors of a corporation are unable to obtain satisfaction in the ordinary mode, if the stockholders are indebted to the corporation on account of subscriptions made by them to the capital stock, and the board of directors fail or refuse to raise the money to pay such debts by making and enforcing against the members the necessary assessments, a court of equity will interfere, and either compel the directors to perform this duty, or according to the modern practice perform it, by its own proper officers. The rights of creditors being superior, and partaking somewhat of the character of a lien, equity will regard and work them out by the same means by which the corporation itself should have done so."

Adler v. Milwaukee Patent Brick Co. 13th Wis. 62;

Ward v. Griswoldville Manufacturing Co. 16th Conn. 601;

Henry v. Vermillion, &c. 17th Ohio 187;

The court will either compel the board of directors to make an assessment, or it will exercise its power through its own officers and processes to accomplish the same substantial result. Would the court compel the assessment by a board of directors of the stock of one stockholder to the exclusion of all others?

WHO SHOULD BE MADE PARTIES.

A late elementary authority (*Thompson's Liability of Stockholders*, sec. 353) thus asserts the rule in equity in cases of creditors' bills in this class of cases:

"Moreover the bill must be filed against all the shareholders, unless some valid excuse is shown for not bringing them in. This must necessarily be so; otherwise the main object of asserting the jurisdiction of equity, the equalizing of the burden of the shareholders and the preventing of the multiplicity of suits would be defeated. Under such a bill an account will be taken of the debts and assets of the corporation, of the amount of capital not paid in, and of the amount due from each shareholder. A receiver appointed in a creditor's suit against a corporation cannot maintain a bill in equity against a single shareholder to collect what is unpaid on his subscription. The cases supporting the rule are;

Wood v. Dummer 3d Mason 312;

Hadley v. Russell 40th N. H. 109;

Erickson v. Nismith 46th N. H. 371;

Mann v. Pentz 3d N. Y. 415;
Pierce v. Milwaukee Con. Co. 38th Wis. 253;
Adler v. Milwaukee Patent Brick Co. 13th Wis. 57;
Coleman v. White 14th Wis. 700;
Carpenter v. Marine Bank 14th Wis. 705;
Umsted v. Buskirk 17th Ohio State 113;
Story Eq. Jur., Sec. 1252;

The case of Oglevie v. Knox Insurance Co. 22d Howard 380, seems to be at variance with the above authorities, but the late cases in this court of Pollard v. Bailey 20th Wall 520, and Terry v. Tubman 2d Otto 156, seem to support the rule fully as cited by the text author.

These cases arose under statutory provisions as to the liabilities of stockholders it is true, but the reasoning of the court applies precisely the same to the liability for unpaid subscriptions to an insolvent corporation. The quality of the fund, that of a trust fund for the benefit of all creditors alike, and the quality of proportionate liability for all debts, is just the same. The qualification in this case that it extends no farther than the stock subscription, in no wise affects the reasoning of the cases.

In the case of Terry v. Tubman, 2d Otto p. 161, the court says:

"The case of Pollard v. Bailey 20th Wall 520, is an authority against the maintenance of a separate action by one creditor, who seeks to obtain his entire debt to the possible exclusion of others similarly situated. The proper proceeding is in equity where all the claims can be presented, all the liabilities of the stockholders ascertained and a just distribution be made."

To these authorities should be added the great authority of Mr. Story's Equity Jurisprudence.

In Story's Eq. Jur., vol. 2, sec. 1252, it is said:

"The property of corporations is held in trust for the creditors and may be pursued by them into whosesoever hands it may come, as well before as after dissolution, unless it may have come to the hands of a *bona fide* purchaser. Upon the like ground the capital stock of an incorporated bank is deemed a trust fund for all the debts of the corporation, and no stockholder can entitle himself to any dividend or share of such capital stock until all the debts are paid; and if the capital stock should be divided leaving any debts unpaid, every stockholder receiving his share of the capital would in equity be held liable *pro rata* to contribute to the discharge of such debts out of the funds in his own hands."

This, however, is a remedy which can be obtained in equity only, for a court of common law is incapable of administering any just relief, since it has no power of bringing all the proper parties before the court, or of ascertaining the full amount of the debts, mode of contributions, the num-

ber of contributors, or the cross equities and liabilities which may be absolutely required for a proper adjustment of the rights of all parties, as well as creditors,"—citing:

Wood v. Dummer 3d Mason 308;
Vose v. Grant 16th Mass. 9;
Carson v. African Co. 1st Ver. 121;

SECOND OBJECTION.

The unpaid subscriptions for stock in an insolvent corporation constitute a trust fund for the benefit of all creditors of the corporation alike or pro rata, and it is not permissible to one creditor to absorb the same to the exclusion of others.

The bill as framed and filed in this cause properly recognized the above rule, as it was in form a general creditor's bill, under which, if opportunity had been afforded by the court, all creditors might have come in and have shared subject to the conditions of contributing to the cost. But no opportunity was afforded the creditors to come in. There was neither a reference for ascertaining other creditors, nor notice of any creditors to come in.

We concede that it was not incumbent upon the complainant to hunt up the creditors, but it was incumbent upon the court to refer the cause to a master with directions to cause notice by publication or otherwise to be given to all creditors before proceeding to final decree appropriating the whole fund to complainant.

"The general rule is that a creditor who proceeds in chancery to subject the liability of the share holders of an insolvent corporation must bring his bill on behalf of all other creditors who may come in and establish their debts according to the course of a Court of Chancery. Whilst liens and legal priorities are preserved, he does not obtain a preference over other creditors by the filing of such a bill, but the property of the corporation, or the sums due from shareholders in respect of their individual liability are sequestered for the ratable benefit of all the creditors."

Story's Eq. Jur., vol. 2d sec. 1252.
Wood vs. Dummer, 3d Mason 312.
Morgan vs. N. York R. Co., 10th Paige, 290.
Mann vs. Pentz, 3d N. Y. 415.
Masters vs. Ressis L. Mining Co., 2d Sandf., 301.
Coleman vs. White, 14th Wis., 700.
Crea vs. Babcock, 10th Metc, 525.
Carpenter vs. Marine Bank, 14th Wis., 705.
Umsted vs. Buskirk, 17th Ohio st. 113.
Pollard vs. Bailey, 20th Wall, 520.
Terry vs. Tubman, 2d Otto, 156.

The early and leading case of Wood v, Dummer lays down this rule very strongly, and although Justice Story allowed the complainant in that cause under peculiar circumstances of the case to proceed to a decree without bringing in all the stockholders, and without proof as to the state of the indebtedness of the corporation, yet he would allow a decree that the complainant should be paid on his debt in only the same proportion that the shares held by the defendant bore to the whole stock of the company.

The doctrine of equity upon this subject in brief is, that the unpaid capital stock of an insolvent corporation is a trust fund for the common benefit of all the creditors of the corporation, that when the aid of a court of equity is invoked the court recognizes this equality of right in all the creditors, and will not allow the trust fund to be monopolized by one or a few creditors merely by a race of diligence, but on the contrary will use its powers and processes so far as it can practicably do so, to effect an equitable and ratable distribution of the fund. For this purpose it will require the Bill to be so framed as to allow all creditors to come in, and at the proper stage of the cause will refer the cause to a master, requiring him to give such notice, constructive or actual, as the court may prescribe, to creditors as may not have joined in the Bill, to come in and make proof of their claims within some limited time, and the decree when rendered should be for the benefit of all the creditors who have proved.

As the court below disregarded this requirement for the protection of the rights of other creditors, as also the requirement that all stockholders should have been parties, excepting as their omission was excused, the decree should be reversed.

D. T. LITTLER,
For Appellants.

SUPREME COURT OF UNITED STATES,

OCTOBER TERM, A. D. 1879.

OZIAS M. HATCH and JOHN WILLIAMS,
Appellants,

v.

CHARLES A. DANA,
Appellee.

No. 1059.

Appeal from the Circuit Court of the U. S. for the Southern District of Illinois.

BRIEF FOR APPELLEE.

Submitted under the 20th Rule.

E. B. McCAGG,

Of Counsel for Appellee.

Beach, Barnard & Co., Legal Printers, 104 Randolph Street, Chicago.

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STATEMENT OF THE CASE.

On April 12, 1871, Charles A. Dana recovered a judgment in the Circuit Court of the United States for the Northern District of Illinois, against the Chicago Republican Company, a corporation organized and existing under the laws of the State of Illinois, for the sum of $6,419.17 and costs. (Printed Record, p. 5.)

An execution was issued upon this judgment and placed in the hands of the U. S. Marshal for the Northern District of Illinois, and by him returned unsatisfied for the reason that there was no property of the corporation found upon which to levy. (Printed Record, p. 23.)

Thereupon, on August 23, 1871, Charles A. Dana, on behalf of himself and all other creditors of the Chicago Republican Company who might come in and seek relief by and contribute to the expense of the suit, exhibited in the Circuit Court of the United States for the Southern District of Illinois his bill of

complaint in equity against the corporation and certain resident stockholders therein (among them these appellants) averring the incorporation of the Chicago Republican Company in February 1865, with a capital stock of $500,000, divided into shares of $100 each; that at a meeting of the incorporators, held in Chicago in April, 1865, certain stock subscriptions were made, the appellants subscribing for 100 shares each, a complete organization of the company was effected, and an assessment of twenty per cent. declared upon the stock subscribed, the corporation thereupon commencing business; that eighty per cent. of the subscriptions to stock so made still remains unpaid; that in October, 1870, the corporation so organized sold and transferred all its tangible property, credits and subscription lists to another corporation of a very similar name, and thereupon ceased to do business; that the corporation is wholly insolvent; avers the recovery of the judgment aforesaid, the issue of an execution thereupon, and its return unsatisfied; that there are no other unpaid creditors than the complainant; and prays that upon an accounting of the amount unpaid upon the stock subscriptions of the stockholders named as defendants, they may be decreed to pay so much of the balance found unpaid on their respective subscriptions as will be sufficient to pay the ascertained debts of the corporation, including the judgment aforesaid, and for general relief. (Printed Record, pp. 2–4.)

The appellants answered the bill, (Printed Record pp. 8–11), Williams adopting the answer of Hatch. The latter admits the incorporation and organization of the Chicago Republican Company, as alleged in the bill; does not deny that he was one of the original stockholders therein, to the amount alleged in the bill, but avers that he paid in thirty per cent. of the amount subscribed by him; admits the sale of its property by the corporation in October, 1870, and that since then the corporation has done no business; does not know whether it owes any indebtedness to complainant or any other person, or whether or not it is insolvent; denies the recovery of the judgment in the Circuit Court of the United States for the Northern District of Illinois, and calls for full proof thereof, but admits that if such judgment

was lawfully rendered, it still remains in full force and unsatisfied; avers that about August 1, 1866, the corporation determined to reduce its capital stock from $500,000 to $200,000, and did so, calling in all existing certificates, and re-issuing to the holders thereof, new certificates for two-fifths of the amount which they originally held, since which time various transfers of portions of the new or substituted stock have been made, but the respondent does not know to whom or by whom they have been made; states the names of certain persons who, together with the defendants, are holders and owners of portions of the stock; and asks that all said persons be made parties, and that an accounting be had, in conformity with the prayer of the bill. (Printed Record, pp. 9–11.)

Replication to the answers was filed. (Printed Record, p. 16.)

Testimony was taken by depositions of witnesses and oral examination on the hearing.

Jacob Bunn testified that the Chicago Republican Company was organized in April, 1865, and that it was sold out to another corporation organized under the general law of Illinois, and thereupon ceased to exist and do business. (Printed Record, p. 18.)

W. I. Culver testified that the averments of the bill of complaint were true, to his knowledge, when it was drawn and filed. (Printed Record, pp. 21–23.)

O. M. Hatch testified that he was one of the original subscribers to the stock of the Chicago Republican Company, (printed Record, p. 24), and afterwards, on the hearing, he swore that he subscribed for 100 shares of $100 each, paying twenty per cent. down and ten per cent. afterwards, for which he produced receipts, making in all thirty per cent. paid by him; that there had been no other call on the subscription; and that the subscription was made in a small blank book, to which there was a heading in substance as follows: "We, the subscribers "hereto, agree to take the number of shares set opposite our "names respectively in the stock of the Chicago Republican "Company, and to pay for the same as called for by said "company." (Printed Record, p. 32.)

Mr. Williams' recollection was not very distinct as to his subscription, but he knows he paid $2,000 at one time, and $1,600 at another, which he was told was all he would be required to pay, and which was all he was ever asked to pay, or did pay, on his subscription. (Printed Record, pp. 25–27.)

The complainant, Dana, relates the history of his connection with the Chicago Republican Company, as editor of its newspaper, and states the nature and consideration of the indebtedness upon which he recovered his judgment against the corporation. (Printed Record, pp. 28–31.)

There was no real dispute about the facts of the case in the court below. A decree was rendered January 6, 1879, that the complainant, Charles A. Dana, recover of Hatch and Williams the sum of $9,398.72, being the amount due on that day upon the judgment in his favor of April 12, 1871, against the Chicago Republican Company, in the Circuit Court of the United States for the Northern District of Illinois, as set forth in the bill of complaint, and that they pay the costs of the suit to be taxed, it being provided, however, that of the sum so decreed to be paid, not more than seven thousand dollars, together with interest thereon from the date of the decree, at the rate of six per cent. per annum, should be made and collected from either said Hatch or Williams, the said sum of seven thousand dollars being the amount the court finds each of them to owe and be indebted to the Chicago Republican Company. (Printed Record, p. 33.)

From this decree Hatch and Williams prosecute this appeal, agreeing as a condition of the appeal that the cause shall be submitted to this court under the twentieth rule. (Printed Record, p. 34.)

Though the first ninety days of the present term, within which the submission should be made, have nearly expired, I have not yet been furnished with the brief of counsel for appellants, and have prepared the foregoing statement of the case, and shall present my views thereon without light as to what objections to the decree appealed from may be made on their behalf.

Brief of the Argument.

1. Dana's judgment against the Chicago Republican Company, and its insolvency, and withdrawal from business entitled him to call upon a court of equity to enforce, for his benefit, the collection from delinquent stockholders in the corporation of the amount of their unpaid stock subscriptions.

Dalton and Morganton R. R. Co. v. *McDaniel*, 56 Georgia, 191.

Angell & Ames on Corporations, Sec. 602.

Henry v. *V. & A. R. R. Co.*, 17 Ohio, 187.

Ogilvie v. *Knox Ins. Co.*, 22 Howard, (U. S.) 380.

Upton, Assignee v. *Tribilcock*, 1 Otto, 45.

2. Nor was it necessary that he should make *all* the delinquent stockholders parties defendant to his bill.

Ogilvie v. *Knox Ins. Co.*, 22 Howard (U. S.), 380.

Bartlett v. *Drew*, 57 N. Y. (12 Sickles), 587.

Argument.

I.

The Chicago Republican Company became indebted to Dana July 1, 1866, upon the contract under and upon which the judgment was rendered in his favor in the Circuit Court of the United States for the Northern District of Illinois, in 1871. (Dana's Testimony, Printed Record, p. 30.)

More than one year before this the appellants and others had subscribed the requisite amount of stock in the company to give the corporation a legal existence. Only twenty per cent. of their respective subscriptions was then paid in. Some time after the organization of the company was completed, however, they paid an assessment of ten per cent., it seems, leaving unpaid to this day the large balance of seventy per cent. of their entire subscriptions.

The insolvency of the company and its transfer to another corporation of all its tangible property, its credits, and its newspaper subscription lists, left its capital stock the sole fund to which its creditors might resort for satisfaction of their demands. It would be a waste of time for me to cite authorities in support of the now established proposition that, so far as these creditors are concerned, the capital stock so subscribed is regarded in equity as a trust fund pledged for the payment of the debts of the corporation, and that this is as true of the unpaid subscriptions as of the amounts actually paid to or realized by the corporation thereon. In this case it appears that Mr. Dana first established his claim against the corporation itself by recovering a judgment in the Northern District of Illinois for the amount to which he was entitled as its creditor; an execution issued thereon and duly returned by the proper officer wholly unsatisfied proves the insolvency of the company, from which it follows that, as I have stated, the unpaid stock subscriptions constitute the only resource of the corporation; nothing remained but for him to file his bill in equity in a jurisdiction to which the solvent stockholders were subject, invoking the power of the court to compel them to respond to his claim upon them to the extent of his debt and their

individual stock liability. That it is within the general powers of courts of equity to compel the full payment of stock subscriptions in insolvent corporations for the benefit of judgment creditors of such corporations, probably no one will now deny. And an examination of the few authorities I have cited will, I think, convince the court that this is a proper case for the exercise of those powers, and that in exercising them in the manner in which it has done, the court below committed no error.

In *Dalton & Morganton R. R. Co.* v. *McDaniel*, 56 Geo., 191, a bill in equity was filed by McDaniel in behalf of himself and others as creditors of the railroad company to compel its stockholders to pay in a sufficient amount of the stock subscribed by them to satisfy certain judgments and debts owing to the complainants by the company. McDaniel had obtained a judgment against the company, on which an execution had been issued and returned *nulla bona*. It was averred that the company had ceased work and abandoned all efforts to carry out the objects of its incorporation, and that it had no property except its stock subscriptions. The prayer was, it would appear, that the living and solvent stockholders might be compelled to pay such a per cent. as should be necessary to liquidate the debts of the corporation. It was objected on the part of the defendants that it was for the directors of the company, and not for the court, to call in the stock subscriptions, and that their contract only obligated them to obey a call emanating from the former source, but the conclusion was that "principle and sound reason accord with "authority that equity will grant relief in all such cases."

Where the proper agents or authorities of a corporation neglect to call in the debts due by the stockholders for stock so as to enable the company to pay its debts, a creditor, by a bill in chancery, can enforce contributions according to their subscriptions, on the ground that the credit which the company has gained as a corporation by the agreement of the individual members to raise a fund, if need be, to enable the corporation to fulfill its engagements, raises an equitable liability on their part to respond to the creditors' demand that they make good the promises which occasioned the credit.

Angell & Ames on Corporations, Secs. 602, 603.

In the case of *Henry* v. *V. & A. R. R. Co.*, 17 Ohio, 187, also brought by a judgment creditor of a corporation to enforce payment from its stockholders, of their unpaid subscriptions, it was held: "The company could compel payment at law, of the "stockholders' contract, according to the charter, when the ne- "cessities or the interest of the company should require this to "be done. And if the company does not, by such means, or "some other, provide funds for payment, there seems no good "reason why the judgment creditor should not have the remedy "here sought." * * * "And when the company cease to "keep up their organization, and abandon all action under the "charter, a proceeding at the instance of the creditor becomes "indispensable." * * * "When a company, as in this case, "becoming insolvent, abandon all action under their charter, the "original mode of making calls upon the stockholders can- "not be pursued."

The case of *Ogilvie* v *Knox Ins. Co.*, 22 Howard, 380, in this Court, was of a similar character to those above referred to, and to the case at bar. Mr. Justice GRIER remarks that "stock- "holders who have not paid in the whole amount of the stock "subscribed and owned by them, stand in the relation of debt- "ors to the corporation for the several amounts due by each of "them. As to them, this bill is in the nature of an attachment, "in which they are called on to answer as garnishees of the princi- "pal debtor." * * * "The ninety per cent. retained by the "stockholders is as much a part of the capital pledged as the "cash actually paid in. When that portion of the capital repre- "sented by these securities is required to pay the creditors of the "company, the stockholders cannot be allowed to refuse the "payment of them, unless they show such an equity as would "entitle them to a preference over the creditors, if the capital "had been paid in cash."

"Creditors are preferred to stockholders on account of the "peculiar trust in their favor, and because the latter, as con- "stituent members of the corporate body, are regarded as sus- "taining, in that respect, the same relation to the former as that "sustained by the corporation."

Opinion of Mr. Justice CLIFFORD in *R. R. Co.* v. *Howard*, 7 Wall., 411.

"Though it be a doctrine of modern date, we think it now "well established that the capital stock of a corporation, especially "its unpaid subscriptions, is a trust fund for the benefit of the "general creditors of the corporation."

Opinion of Mr. Justice MILLER in *Sawyer*. v. *Hoag*, 17 Wall., 620.

In *Upton, Assignee* v. *Tribilcock*, 1 Otto, 45, which was a suit brought originally in the Circuit Court of the United States for the District of Iowa, against a stockholder in the Great Western Insurance Company, to recover eighty per cent. (being the unpaid portion) of his stock subscription, Mr. Justice HUNT said: "It "is hardly necessary to argue the proposition that if the defend "ant became a holder of shares of the capital of this insurance "company to the amount of $10,000, and had paid but twenty "per cent. thereof, its creditors were entitled to require of him "the payment of the eighty per cent. remaining unpaid. The "acceptance and holding of a certificate of shares in an incor- "poration makes the holder liable to the responsibilities of a "shareholder." * * * "The capital stock of a moneyed "corporation is a fund for the payment of its debts. It is a "trust fund, of which the directors are the trustees. It is a "trust to be managed for the benefit of its shareholders during "its life, and for the benefit of its creditors in the event "of its dissolution. This duty is a sacred one, and cannot be "disregarded." * * * "A promise to take shares of stock "imports a promise to pay for them."

II.

But it was suggested in the court below, and may be urged here on behalf of appellants, that *all* the stockholders of the Chicago Republican Company, as well the original subscribers as those who became shareholders afterwards, by purchase or otherwise, should have been made parties defendant to the bill filed by Mr. Dana.

The answer to the suggestion is two-fold:

1st. It is averred in the bill that all the stockholders are made parties whose names are known to the complainant, nor does he know that there are any others than those he has made defendants. (Printed Record, p. 2.)

2d. It was not incumbent upon him to discover others, or when discovered, to add them as defendants. Moreover, if the appellants had any special interest in having other stockholders (if any there were) made parties, it would have been easy for them to have accomplished such a result by filing a cross bill to that end, and they could have brought them into the suit under that by appropriate allegations, process and proofs.

The case of *Ogilvie* v. *Knox Ins. Co.*, 22 Howard, 380, (already cited under another point) would seem to effectually dispose of the anticipated suggestion in regard to parties, if the suggestion shall be made. There it was said, in reference to a bill of the precise character of this: "The objection made to "the bill for want of proper parties is equally untenable. The "creditors of the corporation are seeking satisfaction out of the "assets of the company to which the defendants are debtors. If "the debts attached are sufficient to pay their demands, the "creditors need look no further. They are not bound to settle "up all the affairs of this corporation, and the equities between "its various stockholders or partners, corporators or debtors. If "A is bound to pay his debt to the corporation, in order to sat-"isfy its creditors, he cannot defend himself by pleading that "these complainants might have got their satisfaction out of B "quite as well."

To the same effect is the case of *Bartlett* v. *Drew*, 57 N. Y., (12 Sickels) 587, where it is said by the court: "It is insisted "by the defendant, Drew, that the plaintiff can maintain no "action against him alone, but that she must prosecute not only "all the stockholders, to the end that each shall contribute his "proportion to the payment of her debt, but her suit must be "brought on her own behalf, and on behalf of all the other "creditors of the corporation who may choose to come in. In "other words, in order to collect her debt against the company,

"she must institute a suit to wind up and finally settle all its "affairs. That she *might* do this is not to be doubted, but that "she of necessity *must* do it, presents a different question." * * * "We are of the opinion that the plaintiff's "right of action rests upon a very plain principle of equity. "This is not a proceeding to dissolve and wind up the affairs of "a corporation, or to marshal its assets, but the ordinary pro- "ceeding to collect a debt from a debtor unwilling to pay." * * * "If the law dooms it to the payment of the "debts of the corporation, it may be taken in some form by "the creditor. It is a very plain proposition, that the stock "and property of every corporation is to be regarded as a trust "fund for the payment of its debts, and its creditors have a "lien and the right to priority of payment over any stockholder."

III.

Since writing the foregoing, I have received the brief of Mr. D. T. Littler, for appellants.

On page seven, he sets out what purports to be the act of incorporation of the Chicago Republican Company. It is to be noted, however, that this act nowhere appears in the record; it was a private law; and it was not offered in evidence by either party on the hearing. It is true it was referred to in the pleadings, but this does not serve to make it a part of the record. It is not, therefore, before the court.

The cause was disposed of in the court below upon the authority of *Ogilvie* v. *Knox Ins. Co.* 22 Howard, 380, and cases involving like questions, and decided in a similar manner. I do not find from an inspection of the brief of appellants' counsel that this authority is claimed to have been overruled, or in any degree doubted or questioned by this court. Yet *Pollard* v. *Bailey*, 20 Wall., 520; and *Terry* v. *Tubman*, 2 Otto, 156, are relied upon as asserting a contrary doctrine. An inspection of the facts involved in those cases, and of the reasoning of the court, will demonstrate their inapplicability to the case at bar,

since they were both actions *at law,* and based upon peculiar statutory provisions in the States where they arose.

Pollard v. *Bailey* was based upon a statute making the stockholders liable, proportionately, *beyond* their stock subscriptions, for the debts of the corporation, and was brought for the purpose of compelling payment from a single stockholder after he had paid in the full par value of his stock. The charter created an additional liability, but made it proportionate between all the stockholders. Each stockholder, in other words, was bound for the payment of all the debts, even though he had contributed to the capital of the corporation the whole sum subscribed by him, but this extraordinary liability was to be apportioned among all the stockholders *pro rata;* and the charter expressly provided in what manner, and in what forum this should be done. (Sec. 21 of the charter of that corporation; pp. 521 and 522 of the Report.) The Court, in its opinion, lays much stress upon this provision of the charter there under discussion. (p. 525.)

Here the suit is brought to compel the payment of a debt due to the corporation on a stock subscription, where only thirty per cent. of the amount subscribed had been paid in. The distinction between the two cases, in this regaad, is obvious. And the like distinction, equally broad, clear and determinate, exists between the cases of *Pollard* v. *Bailey* and *Ogilvie* v. *Knox Ins. Co.*

In the case at bar, as well as in *Ogilvie* v. *Knox Ins. Co.*, the remark of Justice GRIER fully applies. As to these stockholders who have not paid in the full amounts of their subscriptions, the "bill is in the nature of an attachment, in which they are called "on to answer as garnishees of the principal debtor."

If the seventh section of the charter of the Chicago Republican Company is correctly set out on page seven of Mr. Littler's brief, it might well be held that Hatch & Williams' liability to creditors of the company was not limited to their stock subscription; but that clause is not invoked by the appellee, and the court below merely charges them, by its decree, for the payment of the seventy per cent. unpaid on their subscription, so far as the same is needed to satisfy the appellee's demand. No question, therefore, arises under that section of the charter.

Again in reporting *Pollard* v. *Bailey*, the reporter emphasizes the fact that it was an action *at law* (p. 522), and the Court said: "The right of Bailey to maintain his action against Pollard, "depends upon the construction to be given to the charter of "the bank." Liability was not denied, but it was insisted it could not be enforced in the manner selected by the plaintiff. (p. 524.) The court announces the principle that the action peculiar to the requirements of such a case should be in equity. The authority of *Ogilvie* v. *Knox Ins. Co.*, is not questioned. I do not dispute the principle inculcated in *Pollard* v. *Bailey*, but on the contrary, recognize it as in every way just, sound and reasonable. But here Dana files his bill in equity in 1871, on behalf of himself and such other creditors of the Chicago Republican Company as might come into the suit on equitable terms; nearly eight years elapse during which his bill is pending, and no creditor avails himself of the privilege offered him, unless it may be Bunn, who files a cross-bill asserting himself to be a creditor of the corporation to a large amount, but afterwards voluntarily abandons his claim by a dismissal of his cross-bill on his own motion.

Presumably, therefore, Dana is the only remaining creditor. Indeed, there is positive testimony in the record to that effect. Bunn testifies that no one holds any claim against the corporation except the Dana judgment and his own claim. He says he paid the debts of the concern. (Printed Record, p. 18.) This testimony is uncontradicted.

But, irrespective of this, there is nothing in *Pollard* v. *Bailey* which makes it obligatory upon the creditor of a corporation to hunt up all the other creditors and bring them in to share in the results of his suit against the stockholders. Nor is there anything in the decision, I respectfully submit, when viewed in the light of the facts of that case, and in the light of the prior decision of *Ogilvie* v. *Knox Ins. Co.* which makes it obligatory upon him to seek out all the stockholders, and bring them into court for the purpose of winding up the corporation. He has done his whole duty when he invokes the aid of the appropriate tribunal—when he brings his case to the proper forum. Then

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Again in reporting *Pollard* v. *Bailey*, the reporter emphasizes the fact that it was an action *at law* (p. 522), and the Court said: "The right of Bailey to maintain his action against Pollard, "depends upon the construction to be given to the charter of "the bank." Liability was not denied, but it was insisted it could not be enforced in the manner selected by the plaintiff. (p. 524.) The court announces the principle that the action peculiar to the requirements of such a case should be in equity. The authority of *Ogilvie* v. *Knox Ins. Co.*, is not questioned. I do not dispute the principle inculcated in *Pollard* v. *Bailey*, but on the contrary, recognize it as in every way just, sound and reasonable. But here Dana files his bill in equity in 1871, on behalf of himself and such other creditors of the Chicago Republican Company as might come into the suit on equitable terms; nearly eight years elapse during which his bill is pending, and no creditor avails himself of the privilege offered him, unless it may be Bunn, who files a cross-bill asserting himself to be a creditor of the corporation to a large amount, but afterwards voluntarily abandons his claim by a dismissal of his cross-bill on his own motion.

Presumably, therefore, Dana is the only remaining creditor. Indeed, there is positive testimony in the record to that effect. Bunn testifies that no one holds any claim against the corporation except the Dana judgment and his own claim. He says he paid the debts of the concern. (Printed Record, p. 18.) This testimony is uncontradicted.

But, irrespective of this, there is nothing in *Pollard* v. *Bailey* which makes it obligatory upon the creditor of a corporation to hunt up all the other creditors and bring them in to share in the results of his suit against the stockholders. Nor is there anything in the decision, I respectfully submit, when viewed in the light of the facts of that case, and in the light of the prior decision of *Ogilvie* v. *Knox Ins. Co.* which makes it obligatory upon him to seek out all the stockholders, and bring them into court for the purpose of winding up the corporation. He has done his whole duty when he invokes the aid of the appropriate tribunal—when he brings his case to the proper forum. Then

he has placed it within the power of other creditors and of the stockholders sued, by appropriate pleadings, to require a complete and equitable settlement of the affairs of the corporation between all persons interested in either relation—in that of debtors or creditors. I submit that reading the various cases in this court cited by both sides, taken together, and they come to this: A creditor of a corporation, having exhausted his remedy at law to collect his debt of the corporation itself, may proceed against such of the stockholders who owe the corporation upon their subscriptions as he can find subject to the jurisdiction of the court, but he *must* proceed in equity where an account may be stated and a full settlement had, at the instance of any party interested in having such full settlement effected. It is by no means essential that he should take upon himself the burden of discovering *all* the stockholders or all the creditors. This labor rests with those most interested in its results.

The several decisions of this court, claimed by counsel for appellants to be at variance, are thus in entire accord, and in the light of them, we arrive at the conclusion that the appellants have suffered no legal harm by the action of the court below, since it was within their power to ask the court to appoint a receiver for the corporation, who, under the direction of the court might have sought out other stockholders (if any there are), and enforced an equal contribution from and against all. Or they might have filed cross-bills under which they could have discovered and brought other stockholders in for the same purpose. It would be unreasonable and most inequitable to require a meritorious creditor of a corporation to take upon himself the burden of winding up the affairs of every corporation which may become indebted to him, as a necessary means of collecting his debt. Let those bear the burdens who have created them.

But, as matter of fact, Dana made parties defendant all stockholders of whom he had any knowledge, and it is by no means certain that there are any others. Bunn, one of the most

active of the men who participated in the formation and conduct of the corporation, positively swears that he knows of no other subscriptions to the capital stock than those enumerated in the bill of complaint. (Printed Record, p. 19.)

Culver swears that he copied the names of all the stockholders he found in the books of the corporation, and inserted them in the bill as parties, (printed Record, p. 22), with the exception of A. W. Mack, who died wholly insolvent before the filing of the bill.

Hatch states that some other names were among the original subscribers, but his recollection is quite indefinite. (Printed Record, p. 25.) The same may be said of the testimony of Williams. (Printed Record, p. 26.)

It appears that sometime after the original organization of the company, and after the indebtedness to Dana accrued, there was a reduction of the capital stock from $500,000 to $200,000. (Printed Record, p. 19.) It is quite probable that the new stock in fact went into other hands than those of the original subscribers, and these, I think, are the parties referred to by Hatch and Williams. Their recollection I believe to be at fault when they assert that other persons than those named as parties to the suit were among the holders of the original stock. If I am correct in this assumption, it follows that the objection as to the want of proper parties to the bill is not well founded in fact.

Those whom Dana made parties all fell out of the case, except Hatch and Williams, for various reasons and in various ways; Bunn by showing his stock subscription fully paid up by advances to the corporation; Dubois by insolvency and death pending the suit; and Beckwith and Munn by non-residence, summons never having been served upon them. (Printed Record, p. 6.) Munn was also insolvent, and became bankrupt.

The appellants did not ask the court below for any relief, or that the cause be referred to a Master for any purpose, nor did they object to the dismissal of the bill as against certain defendants. This they should have done if they intended to complain here of the action of the court in the premises. The bill was

dismissed only as against Bunn, for reasons already stated, and against other defendants not found by the marshal within the jurisdiction of the court, or deceased.

E. B. McCAGG,

Of Counsel for Appellee.

CHICAGO, January, 1880.